TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1239. 819 490

LOUIS PHILLIPS, LUGARDO A. DE PALOMARES, AND A. E. SEPULVEDA, ADMINISTRATOR OF FRANCISCO PALOMARES, DECEASED, PLAINTIFFS IN ERROR,

vs.

THE MOUND CITY LAND AND WATER ASSOCIATION, THE LOS ANGELES COUNTY BANK, AND MARY G. L. DALTON, EXECUTRIX OF HENRY DALTON, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JANUARY 2, 1886.

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1 to 4 *Transcript on Appeal.*

In the Supreme Court of the State of California.

THE MOUND CITY LAND AND WATER ASSOCIATION, a Corporation, and Los Angeles County Bank, a Corporation, Plaintiffs and Respondents,
vs.
LOUIS PHILLIPS, TRINIDAD YORBA, FRANCISCO PALOMARES, HENRY DALTON, Defendants and Appellants. } No. 8614.

Thom & Stephens, F. H. Howard, attorneys for appellants; R. M. Widney, attorney for respondents.
Filed Sept. 4, '82.

5 In the Superior Court in and for Los Angeles County, California.

THE MOUND CITY LAND AND WATER ASSOCIATION, a Corporation, and LOS ANGELES COUNTY BANK, a Corporation, Plaintiffs,
vs.
LOUIS PHILLIPS, TRINIDAD YORBA, FRANCISCO PALOMARES, HENRY DALTON, Defendants.

Plaintiffs, complaining of the defendants, allege that the plaintiffs are separate corporations duly incorporated under the laws of this State, and in good faith acting as such corporations, with powers to hold and convey and buy real estate.

That the plaintiff, The Mound City Land and Water Association, is the owner of an undivided one-third of the Ranchos San Jose and San Jose Addition, in Los Angeles county, California; that the patents for said rancho have been duly issued by the Govern-
6 ment of the United States to Henry Dalton, Ygnacio Palomares and Louis Phillips, conveying to each of said persons an undivided one-third of said rancho; that the Mound City Land and Water Association, by proper conveyances, has become the owner of the interest of said Henry Dalton; that Trinidad Yorba has become, by proper conveyances, the owner of the interest of Francisco Palomares; that said Louis Phillips is the owner of the other one-third; that said plaintiff, Los Angeles County Bank, has a mortgage on the one-third belonging to the Mound City Land and Water Association; that said land is held by the said Mound City Land and Water Association and said Trinidad Yorba and said Louis Phillips as tenants in common; that the mortgages to said Los Angeles County Bank *is* duly recorded in book 1 and book —, page —, of mortgages of Los Angeles county records, on which mortgages are due over $23,000.

Wherefore plaintiffs pray that a decree of partition herein be entered, partitioning said premises between the respective parties herein in the manner provided by law, and for such other and further relief as may be just, and for costs of suit.

R. M. WIDNEY,
Attorney for Plaintiffs.

Endorsed: Filed January 19th, 1880. A. W. Potts, clerk, by Chas E. Judd, deputy.

7 *Demurrer of Louis Phillips.*

Title of court and cause.

Now comes the defendant, Louis Phillips, and, appearing by his attorneys, demurs to complaint, and for cause says:

I.

That the same does not state facts sufficient to constitute a cause of action.

II.

That there is a misjoinder of parties defendant, in this, that Henry Dalton is made a party defendant with the other defendants, and it appears from the complaint that he has no interest in the subject-matter of the suit.

THOM & STEVENS,
Attorneys for Defendant Phillips.

Filed May 19, 1880.

Amended Complaint.

Title of court and cause.

Now come the plaintiffs, under order of court, and amend the complaint herein, and allege that said Francisco Palomares and Henry Dalton, notwithstanding the facts set out in the com-
8 plaint, assert some claim or interest to said premises, or to some part thereof, the extent or character of which is unknown to plaintiffs.

R. M. WIDNEY,
Attorney for Plaintiff.

Filed June 9th, 1880.

Demurrer to Amended Complaint.

Tile of court and cause.

Now comes the defendant, Louis Phillips, and demurs to the complaint as amended, and to the amendment to the complaint, and for cause of demurrer says:

I.

That the same are unintelligible, uncertain, and contradictory.

II.

That the same do not state a cause of action.

III.

That there is a misjoinder of parties, in this, that Henry Dalton and and F. Palomares are each improperly joined with the defendant in this action.

IV.

Because it does not appear whether the proposed amended complaint is intended as an amendment or as an amended complaint.

THOM & STEVENS,
Attorneys for Phillips.

Filed June 10, 1880.

9 *Demurrer of Henry Dalton.*

Title of court and cause.

Now comes the defendant, Henry Dalton, and demurs to the plaintiffs' complaint herein, and as grounds of demurrer says:

I.

The complaint does not state facts sufficient to constitute a cause of action.

II.

The complaint is uncertain in this—
1st. It does not show what interest or estate in the lands sought to be partitioned either the plaintiff or this defendant has or claims to have. 2d. It does not describe or show what lands are sought to be partitioned.

SMITH, BROWN & HUTTON,
Attorneys for Defendant Dalton.

Filed February 5, 1881.

Demurrer of Trinidad Yorba and Francisco Palomares.

Title of court and cause.

Now come Trinidad Yorba and Francisco Palomares, two of the defendants above named, and demurring to the amended complaint filed herein for themselves alone, and assign the following grounds, to wit:

10 I.

The complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them.

II.

There is a misjoinder of parties plaintiff in said action, in this: the Los Angeles County Bank is improperly united as a plaintiff with the Mound City Land and Water Association.

III.

There is a misjoinder of parties defendant, in this: Francisco Palormares is improperly united with his codefendants, and with each of them. Henry Dalton is improperly united with his codefendants, and with each of them.

GRAVES & CHAPMAN,
Attorneys for Defendants Palormares and Yorba.

Filed June 19, 1880.

Ruling on Demurrer.

Title of court and cause.

FRIDAY, *February* 25, 1881.

In open court, at 10 o'clock a. m.
Present: Hon. V. E. Howard, judge; the sheriff and the clerk.
Demurrer overruled; 10 days to answer.

11 *Answer of Louis Phillips.*

Title of court and cause.

Now comes the defendant, Louis Phillips, and severing from his codefendants and answering the complaint and amendment thereto:

I.

Denies generally and specially each and every allegation of the complaint and amendment thereto.

II.

And, for a further and separate answer and defense, says that there is a misjoinder of parties plaintiff, in this: that the Los Angeles County Bank is improperly united with the other plaintiff in the cause.

III.

And, for a further and separate answer and defense, says that there is a misjoinder of parties defendant, in this: that each of the defendants is improperly joined with each other and with this defendant.

IV.

And, for a further and separate answer and defense, defendant says that on the 15th day of April, 1837, the Mexican government, by its grant duly made, granted to Ygnacio Palomares and Ricardo Vejar the ranch described in plaintiff's complaint as
12 the Rancho San Jose, and thereafter, said Palomares and Vejar having formed a partnership with Luis Arena, the Mexican government granted to said three last-named persons the said Rancho San Jose, and, in addition thereto and adjoining the same, granted to them the ranch described in plaintiff's complaint as San Jose Addition.

Juridical possession was duly given of said tracts as follows, to wit: Of the San Jose on the 3d of August, 1837, and of the San Jose Addition on May the 7th, 1840.

Subsequent to these proceedings and prior to the date next hereinafter mentioned, by divers mesne conveyances, defendant, Henry Dalton, became invested with all the right, title, and interest of the said Luis Arenas in said tracts of land. On the 19th of January, 1846, upon the petition of said Dalton and Vejar, the court of the first instance of the city of Los Angeles, by its judgment duly made and given, decreed that the said tracts of land should be partitioned

between the said three tenants, and thereafter each should hold his own in severalty.

And thereafter, on the 12th day of February, 1846, the said court, after proceedings duly had for that purpose, by its judgment, duly made and given, did decree and set apart to each of said parties in severalty his share and portion in said ranchos, to be there-
13 after by each held in severalty. The part thereof so adjudged, allotted, and set off to said Ricardo Vejar is bounded and described as follows: Commencing at the southeasterly corner of the Rancho San Jose, following thence westerly the southern boundary of said ranch, following the line thereof to a walnut tree, a monument in the map of said partition made by Gaspar O'Farrell; thence northwesterly along the boundary of said ranch to the live oak tree, another monument in said O'Farrell survey; thence northerly to the northwesterly corner of the tract set off to said Vejar by said partition; thence easterly to the southwesterly corner of the part of said land set off to said Palomares; thence following the division between said Palomares and said Vejar, and according to the line now recognized as the division line between said two parties to the eastern boundary of said ranch; thence southerly along the eastern boundary line of said ranch to the point of beginning. Thereafter the said three parties recognized said partition, each entering upon and claiming the part set off to him in severalty, and they, their assigns, and heirs have, respectively, up to the institution of this suit continued to recognize said boundaries and allotments as binding and satisfactory to them. Thereafter, on the 30th day of April, 1864, this defendant relying upon the binding effect of said partition and actu-
ated thereto by the conduct of said Dalton, who then continued
14 to hold in severalty the share set off to him, as above specified, and who at that time disclaimed any ownership in the part so set off to said Vejar, this defendant bought from the vendee of said Vejar said tract so set off as aforesaid to said Vejar, and paid therefor a large sum of money, to wit, the sum of $—; and this defendant would not have paid said money nor bought said land but for the conduct of said Dalton, and the belief induced by said acts as aforesaid that there had been a partition, and that all parties concerned were acting upon it. Ever since said last-mentioned day this defendant has held and maintained open, notorious, exclusive, and adverse possession of said last-mentioned tract against plaintiffs, the Mound City Land Association and the Los Angeles County Bank, and all the world.

And, relying upon the conduct of said Dalton, as above set out, this defendant has expended in buildings, fencing, and other improvements, with the knowledge of said Dalton, upon said tract, a large sum of money, to wit, about — thousand dollars, which this defendant would not have expended but for the conduct of said Dalton. Moreover, defendant has sold to various persons divers small tracts of land upon said tract, and a town has been settled and built thereon, with inhabitants numbering about — persons;
15 that shortly before the institution of this suit the plaintiff-acquired whatever interest they may have by divers mesne

conveyances of said Dalton, with full knowledge of the claim, possession, and rights of this defendant.

VI.

And, for a further and separate answer and defence, this defendant says that plaintiffs and their grantors have not been seized or possessed of the said tract of land so set off to Vejar for thirty-four years last past.

VII.

And, for a further and separate defence, defendant says that plaintiffs' cause of action is barred by the provisions of sec. 318 of the code of civil procedure.

VIII.

And, for a further and separate answer and defence, defendant says that neither of the corporations plaintiff has ever filed a certified copy of the certificate of its articles of incorporation in the office of the county clerk of the county of Los Angeles. The land in controversy is situated in Los Angeles county. The interest, whatever it is, that plaintiffs may have was acquired more than sixty days before the institution of this suit. The articles of incorporation of the plaintiff, The Land and Water Association, nor the articles of incorporation of the plaintiff, The Los Angeles
16 County —, nor copies of a copy of either of said articles of incorporation filed in the office of Secretary of State have either ever been filed in the office of the county clerk of Los Angeles county. Wherefore defendant says that plaintiffs ought not to maintain this action.

IX.

And, for a further and separate answer and defense, defendant says that since the institution *by* certain adverse proceedings the plaintiffs have been each divested of all their right, title, and interest in any of the land in controversy.

Wherefore defendant prays for judgment that he go hence and recover of plaintiffs his costs.

THOM & STEPHENS,
Attorneys for Defendant, Louis Phillips.

Filed March 5, 1881.

Cross-Complaint.

Title of court and cause.

Now comes the defendant, and, in addition to his answer herein, files this his cross-complaint against the plaintiffs, The Mound City Land and Water Association and the Los Angeles County Bank, and for cause of action alleges—

I.

That the said plaintiffs are corporations duly existing under the laws of California.

17

II.

Said plaintiffs, on the 19th day of January, 1880, instituted suit against this defendant and others, praying for a partition of the lands hereinafter described. This defendant has filed herewith his answer defending against said action.

III.

Defendant further alleges that on the 15th day of April, 1837, the Mexican government duly granted to Ygnacio Palomares and Ricardo Vejar that certain ranch situate in the county of Los Angeles, California, known as the Rancho San Jose, and thereafter said Palomares and Vejar, having formed a partnership with Luis Arenas, the Mexican government granted to said three last-named persons the said Rancho San Jose, and in addition thereto, and adjoining the same, granted to them the ranch known as the Addition to San Jose. Juridical possession was duly given of said tracts as follows, to wit: Of the San Jose on the 3d day of August, 1837, and of the Addition to San Jose on May the 7th, 1840. Subsequent to these proceedings, and prior to the date next hereinafter mentioned, Henry Dalton became invested with all the right, title, and interest of the said Luis Arenas in said tracts of land. On the 19th of January, 1846, upon the petition of said Dalton and Vejar, the court of the first instance of the city of Los Angeles, by its judg-

18 ment duly made and given, decreed that the said tracts of land should be partitioned between the said three tenants, and that thereafter each should hold and own his share and portion in severalty. On the 12th day of February, 1846, the said court, after proceedings duly had for that purpose, by its judgment duly made and given, did decree and set apart to each of said three parties in severalty his share and portion of said two ranchos, to be thereafter by each held in severalty. The part thereof so adjudged, allotted, and set off to Ricardo Vejar is bounded and described as follows, to wit: Commencing at the southeasterly corner of the Rancho San Jose, following thence general direction westerly the southern boundary of said ranch along the line thereof to a walnut tree, a monument in a map made by Gaspar Farrall for the purpose of said partition at the time thereof; thence northwesterly along the boundaries of said ranch to a live oak tree, another monument in said Farrall survey; thence northerly to the northwesterly corner of said tract set off to said Vejar by said partition, which said corner is commonly known by the above description; thence easterly to the southwestern corner of the land set off to Palomares by said partition; thence following the division line between said Palomares and said Vejar to the eastern boundary of said San Jose ranch; thence southerly along the eastern boundary of said ranch to the point of beginning.

19 Thereafter immediately each of said parties entered upon and continued to occupy exclusively the part and portion so allotted to him, claiming the sole and exclusive title thereto in severalty; and they, their heirs, assigns, and representatives in said

land have, respectively, up to within a short time of the institution of this suit, recognized said allotment and partition as obligatory and satisfactory to them.

IV.

Thereafter, on the 30th day of April, 1864, while the said Dalton was still the owner, occupant, and possessor of the tract allotted to him as above, and while he was claiming to own and hold the same to the exclusion of said Palormares and Vejar, and while he was recognizing and adopting the partition so made, and not asserting any claim or right to the part so set off to said Palormares and Vejar respectively, but, on the contrary, conceding and recognizing to each the right and ownership of the said tracts so respectively set off to them, this defendant relying upon the validity of said partition, and induced thereto by the conduct of said Dalton, bought from the vendee of Vejar said tract so set off as aforesaid to said Vejar, and paid therefor a large sum of money, to wit, the sum of about $10,000.00. This defendant would not have made said purchase, nor have paid said money, but for the conduct of said Dalton,
20 and the belief induced by his said acts as aforesaid that there had been a partition of said lands.

And this defendant, relying upon the validity of said partition and the conduct of said Dalton, has since then, with the knowledge of said Dalton, while he held the title of his said allotment, spent divers large sums of money upon the tract so purchased by him, this defendant, in a residence, fences, and other improvements, and has sold numerous specific tracts thereof to divers purchasers, and a town has been laid off thereon and built up, and is now inhabited by about 200 people.

V.

Ever since the date of the purchase by this defendant he has claimed, held, and maintained open, notorious, exclusive, and adverse possession of the tract of land so purchased, claiming the same against said Dalton, the plaintiffs, and all the world.

VI.

Said Dalton continued to own the parcel of land allotted to him down to January, 1877, and in September, 1878, the plaintiff, The Mound City Land and Water Association, acquired by divers mesne conveyances the interest of said Dalton therein. The plaintiff, The Los Angeles County Bank, claims some interest in said land by virtue of a mortgage to it executed by said Dalton in 1877.

21 VIII.

Notwithstanding the facts above set out, the plaintiff, The Mound City Land and Water Association, claims to own, and the plaintiff, The Los Angeles County Bank, claims a lien upon the undivided one-third interest in the said Ranchos San Jose and the Addition to the San Jose, including the part so allotted to Vejar.

IX.

The heirs and assigns of said Palomares, he being now dead, recognize the partition as made by said court of the first instance.

X.

On the 29th day of September, 1852, Henry Dalton filed his separate partition with the commissioners to ascertain and settle the private land claims in the State of California, whereby he claimed a confirmation of his title, among other tracts, of the tract set off by the said decree in partition above referred to by this pleading. And said commission thereafter, by its judgment and decision duly made and given, declared his said claim so set up to be valid, and confirmed the same to him, which decree and decision having been taken by appeal to the district court of the United States for the southern district of California, said court thereafter, by its judgment duly made and given, affirmed the decision of said commissioners.

22 XI.

On the 29th day of September, 1852, said Palormares, and on the 9th day of October, 1852, said Vejar, each separately filed their petitions with said commissioners, each claiming thereby the separate parcel allotted to him by said partition, and asking that the same be confirmed to him. And thereafter said commissioners, by their judgment and decision duly made and given, declared the claim of each to his separate part so claimed to be valid, and confirmed the same to them, each separately.

And thereafter, an appeal having been taken to the district court of the United States for the southern district of California by the United States, said court, by its separate judgment in each of said cases duly made and given, affirmed the decision of said land commissioners.

XII.

Thereafter the Government of the United States issued its patent to said Henry Dalton, Ygnacio Palomares, and Ricardo Vejar on the 4th day of December, 1875, for the Rancho Addition to San Jose, and on the 20th of January, 1885, issued to the same persons its patent to the Rancho San Jose.

XIII.

23 The said Mound City Land and Water Association and the Los Angeles County Bank claim some interest in said lands so set off to Vejar and now owned by this defendant, Phillips, by virtue of said patent, but said claim is without foundation or right. But, nevertheless, these pretensions and claim embarrass this defendant in the disposition, sale, and ownership of his property. And whatever title they may have, if any they have, is a naked legal title, and is held in trust for this defendant, Phillips.

XIV.

Whatever interest the said corporation- have was acquired with full knowledge of the right, title, claim, and possession of this defendant, Phillips. Wherefore this defendant, Phillips, prays judgment that he be forever quieted in his title and possession to said tract of land so allotted to said Vejar; that said corporations be decreed to execute a deed to him for said tract, and for general relief, with costs.

THOM & STEPHENS,
Attorneys for Phillips.

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

Louis Phillips, being first duly sworn, on his oath says
24 that he has heard read the within and foregoing cross-complaint; that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and that as to those matters and things he believes it to be true

Subscribed and sworn to before me this March 5th, 1881.
A. W. POTTS, *Clerk.*

Filed, March 5, 1881.

Answer of Francisco Palomares and Lugarda Palomares.

Title of court and cause.

And now come Francisco Palomares and Lugarda A. de Palomares, wife of the said Francisco, the said Lugarda A. having been substituted for Trinidad Yorba, and answer the amended complaint filed, and for such answer they deny—

I.

That the plaintiff, The Mound City Land and Water Association, is or ever was the owner of an undivided one-third of the Rancho San Jose or the San Jose Addition, or any part thereof.

II.

They deny that the first plaintiff is or ever was the owner of any interest, undivided, in said San Jose rancho, or any part
25 thereof, or in the San Jose Addition, or any part thereof, save and except a small portion thereof hereinafter more particularly described.

III.

They deny that the said San Jose ranch, or the San Jose Addition, or either of them, or any part of either of them (save a small portion hereinafter described), is held in common and undivided; but, on the contrary, they aver that said San Jose rancho and the said San Jose Addition were long since partitioned, except the portions above referred to, and the said San Jose rancho and the San Jose

Addition have (except as to said portion), ever since said partition, been held in severalty by the *answer* thereof.

IV.

They deny each and all the allegations of the complaint.

V.

They aver that since the commencement of this action the defendant, Lugarda A. de Palomares, has surrendered all the right, title, and interest of the defendant, Trinidad Yorba, which he had at the commencement of the action in and to the said San Jose ranch and the San Jose Addition.

And, for a further and separate answer and defence, defendants say that on the 15th day of April, 1837, the Mexican government,
26 by its grant duly made, granted Ygnacio Palomares and Ricardo Vejar the ranch described in plaintiff's complaint as the Rancho San Jose; and thereafter, said Palomares and Vejar having formed a partnership with Luis Arenas, the Mexican government granted the said three last-named persons the said Rancho San Jose, and in addition thereto, and adjoining the same, another tract of land known as and described in plaintiff's complaint as the San Jose Addition; and thereafter juridical possession was duly given of said tracts as follows: Of the San Jose ranch on the 3d day of August, 1837, and of the San Jose Addition on May the 7th, 1840. Afterwards, to wit, on the 19th day of January, 1846, upon the petition of said Henry Dalton and Ricardo Vejar, the court of first instance of the city of Los Angeles, by its judgment duly given and made, decreed that the said tracts of land should be partitioned between the said three tenants, and thereafter each should hold his own in severalty. And afterwards, to wit, on the 15th day of Febauary, 1846, the said court, after proceedings duly had for that purpose, by its judgment duly given and made, did decree and set apart to each of said parties in severalty his share of said Ranch San Jose and San Jose Addition, and did make complete partition thereof and of the whole of said lands between the said parties, except a small portion of the San Jose Addition hereinafter more fully de-
27 scribed. And the defendants aver that the said Lugarda A. de Palomares is now the owner of the tract of land so set apart by the said court to the said Ygnacio Palomares, and which said tract of land so allotted to the said Ygnacio by the judgment of the court of first instance is described as follows, to wit: Commencing at a point in the east line of the San Jose rancho from which the southeast corner of said ranch bears southerly 252 distant; thence running true courses N. 76 degrees W. 211.37 chains; thence N. 560 degrees W. 173.39 chains; thence N. 34 degrees E. 274.94 chains; thence S. 76 deg. E. 112.08 chains; thence N. 70 deg. 30 min. E. 292.00 chains; thence S. 22 deg. W. 487.00 chains to the place of beginning, containing 13,145.55 acres.

II.

Defendants further aver that the said Lugarda A. de Palomares has succeeded to and become vested with all the right, title, and interest of the said Ygnacio Palomares in and to the said tract so set apart to him in said partition, and that he is now the owner in fee and in severalty of said described tract of land.

The said defendant, further answering the said complaint, avers that by the final survey of said rancho and the patent thereto, there was included a small tract of land not included in the said
28 partition boundaries described as follows: Commencing at the southeast corner of said San Jose ranch and running thence N. 790.45 W. 171.14 chains to a point; thence N. 53 degrees W. 203 chains; thence easterly in a straight line to the place of beginning, containing six hundred and thirty-two $\frac{93}{100}$ acres of land.

III.

That said tract remains in common and undivided between the parties to this action, and that the said defendant, Dugarda A. de Palomares, is the owner of an undivided one-third thereof, and the defendant, Louis Phillips, is the owner of one-third thereof, and the Los Angeles County Bank is, as defendants are informed and believe, the owner of the undivided third thereof; and the said Francisco Palomares and Lugarda A. de Palomares, for a cross-complaint against the plaintiffs and the other defendants herein for cause of action, allege—

I.

That the said Francisco and Lugarda A. de Palomares are husband and wife.

II.

That the Los Angeles County Bank is a corporation duly formed under the laws of the State of California.

29 III.

That the Mound City Land and Water Association is a corporation duly formed and existing under the laws of the State of California.

IV.

That said Lugarda A. is the owner in fee of that tract of land, being part of the land described in the complaint and described as follows: Commencing at a point in the east boundary of the San Jose ranch 252.82 chains northerly from the S. E. corner of said ranch, running thence at 76 deg. W. 211.39 chains; thence N. 56 deg. W. 173.39 chains; thence N. 34 deg. E. 274.94 chains; thence S. 76 deg. E. 112.08 chains; thence N. 70 deg. 30 min. E. 292.00 chains; thence S. 22 deg. W. 487 chains to the place of beginning, containing 13,145.55 acres, and of which said land she is now in possession.

That the plaintiffs and the other defendants herein claim an in-

terest therein adverse to the interest and estate of the said Lugarda A. de Palomares, but said claim is without foundation, and the said plaintiff and said defendants, except Lugarda A. de Palomares, have no right, title, interest, or estate in said described tract.

Therefore the said defendants, Lugarda A. de Palomares and Francisco, her husband, pray the judgment of this court that
30 the said Lugarda A. is the owner in fee of said tract of land last above described, and that her title thereto is good and valid, and that the said plaintiff and the defendants, other than said Lugarda A. de Palomares, have no interest in said land, or any part thereof, and for their costs.

And now the said Lugarda A. de Palomares and Francisco Palomares, her husband, answer the cross-complaint of Louis Phillips, filed herein, and for such answer—

Den*ies* that the said Louis Phillips is the owner of any portion of the land described in his said cross-complaint, lying north of a line commencing on the east boundary of the San Jose ranch, at a point in said boundary 252.82 chains northerly from the southeast corner of said ranch, and running thence N. 76 deg. W. 210.37 chains; thence N. 56 deg. W. 173.39 chains to the southwest corner of the land of said Lugarda A. de Polomares.

II.

Den*ies* that said Phillips is the owner of that certain tract of land lying and situate as follows: Commencing at the S. E. corner of the Rancho San Jose and running thence N. 79 deg. 45 min. west, along the patent line of said ranch, 171.14 chains; thence N. 53 deg. W.; still along the southern boundary of said ranch as patented,
31 203.00 chains; thence easterly in a straight line to the place of beginning, containing 632.93 acres of land; but avers that said tract is owned by the plaintiff, the Mound City Company, and the said Louis Phillips and the said Lugarda A. de Palomares as tenants in common, and that the said Lugarda A. is the owner of an undivided one-third thereof.

III.

Deny that said Phillips is the owner of that other tract of land included in the land described in his answer and described as follows: Commencing at the S. E. corner of the said San Jose rancho, and running thence N. 59¼ degrees E. 27 chains along the southeastern boundary of the ranch as patented; thence N. 8 deg. E. 89 chains; thence southwesterly in a straight line to the place of beginning, containing 93.72 acres; but avers that said tract of land is owned and held by the plaintiff, the Mound City Land and Water Association, and Louis Phillips, and the said Lugarda A. de Palomares as tenants in common, each owning an undivided one-third thereof.

Wherefore defendants, Lugarda A. and Francisco Palomares, ask that as to the above tracts of land the prayer of defendant Phillips' cross-complaint be denied, and that the defendant, Lugarda

32 A. de Palomares, be adjudged to be the owner of one-third of said two tracts last described herein.

GRAVES & CHAPMAN,
Attorneys for Plaintiffs, Francisco Palomares and Lugarda A. de Palomares.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss:*

Francisco Palomares, being duly sworn, deposes and says that he is one of the defendants named in the answer to the cross-complaint of Louis Phillips; that he has heard read the said answer to said cross-complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me this — day of September, 1881.

——— ———.

Filed September 6, 1881.

Demurrer to Cross-Complaint.

Title of court and cause.

Now comes Louis Phillips and, demurring to cross-complaint filed here by Francisco Palomares and Lazarda A. de Palomares and for cause, says:

33 First. That the same does not state facts sufficient to constitute a cause of action, or a cross-complaint or a counter-claim.

Second. That the alleged cause of action therein set up is improperly joined with a cause of action set up in their answer to the original complaint for a partition of another and distinct parcel of land sought by said F. and L. Palomares in their answer and is improperly filed in an action for partition.

THOM & STEVENS,
Attorneys for Phillips.

Demurrer to Cross-Complaint.

Title of court and cause.

Now comes the defendant, Louis Phillips, and demurring to the answer of Lazarda A. de Palomares and Francisco Palomares to the original complaint in this cause, and to so much thereof as seeks to have partition of the tract of land therein described, on the ground that the same is improperly set up in this cause, and demurs to the whole of said answer on the ground that the same does not state facts sufficient to constitute a cause of action or defense.

34 *Answer Henry Dalton.*

Title of court and cause.

The defendant, Henry Dalton, answers the complaint herein, and denies each and every allegation thereof.

And, further answering, the defendant, Henry Dalton, alleges that on the 28th day of September, 1878, James B. Seawell, David H. Seawell, Thomas W. Hudson, James N. Wiley, Thomas H. Rickman, George W. Park, George W. Morgan, and William A. Spurlock were the owners of an equal undivided third of the two ranchos described in the complaint, and known as the Rancho San Jose and San Jose Addition.

That said James B. Seawell and the other persons above named, while such owners, on the said 28th day of September, 1878, executed and delivered to one Lewis Wolfskill, who, together with the defendant, Henry Dalton, and his wife, G. Z. de Dalton, had on the same day sold and conveyed to said James B. Seawell and others above named their said interest in said ranchos, a mortgage upon their said interest in said two ranchos to secure the payment of $105,000, balance of the purchase-money, one-half thereof payable July 25th, 1879, and the other half July 25th, 1880, with interest on the whole at the rate of ten per cent. per annum, payable annually, se-
35 cured by two promissory notes; that said mortgage was duly executed and acknowledged so as to entitle it to be recorded, and was on the 1st day of October, 1878, duly recorded in Book 33 of mortgages, in pages 442, in the recorder's office of the county of Los Angeles; that on the 1st day of October, 1878, there was paid on said sum secured by said mortgage the sum of $31,024.25, one half of which was credited on each of said notes, and nothing more has been paid thereon; that on the 2d day of October, 1878, the said Louis Wolfskill assigned and set over to the Farmers' and Merchants' Bank of Los Angeles, which then was and still is a corporation duly organized under the laws of the State of California, the said mortgage and the notes secured thereby, and said corporation still holds said mortgage and notes; that there is now due upon said mortgage the sum of $7,396.75, with interest thereon from September 28, 1878, at the rate of ten per cent. per annum.

That said James B. Seawell and the others with him above named sold and conveyed to the plaintiff herein their said one-third interest in said ranchos on the 2d day of October, 1878, after the said execution and recording of said mortgage, and that plaintiff at the time of the execution of said conveyance had full notice of said mortgage.

36 That the plaintiff's only interest in said two ranches is derived from and under said conveyance from James B. Seawell and others.

That on the 28th day of September, 1878, the said Louis Wolfskill held the legal title to the one-third interest in said ranches aforesaid in trust for this defendant, Henry Dalton; and the mortgage and notes aforesaid were executed to said Louis Wolfskill in

trust for said Henry Dalton, who thereupon became the equitable owner thereof.

That the assignment aforesaid to the Farmers' and Merchants' Bank was made without consideration and in trust for the said Henry Dalton; that said mortgage and notes were by agreement between said Dalton and said Wolfskill executed to the latter as security for a balance of money due him from said Dalton, the amount of which was then and still is unascertained and undetermined, but which, as defendant is informed and believes, does not exceed $10,000.

That before the commencement of this suit one A. Lothian duly attached, under a writ of attachment duly issued under the seal of the late district court of the 17th judicial district of this State, in a suit then pending in said court, wherein said A. Lothian was plaintiff and said Lewis Wolfskill was defendant, all the interest of said Wolfskill in said mortgage and notes, the lien of which
37 attachment still subsists. That since the commencement of this suit this defendant, on the 13th day of September, 1881, sold and conveyed to one F. Sabich all his right, title, and interest in or to said mortgage and notes, and all the right, title, or interest that he might then have in or to said ranches under or by virtue of said mortgage or otherwise; and defendant has now no right, title, nor interest in or lien upon said two ranches.

Wherefore defendant prays that partition may be made of the land described in the complaint according to the rights of the respective parties, and that the mortgage aforesaid may be declared a lien upon any part of said premises that may be awarded to plaintiff, and for costs.

SMITH, BROWN & HUTTON,
Attorneys for Defendant Dalton.

Filed December 7, 1881.

Answer of Plaintiff to Cross-Complaint.

Title of court and cause.

Now comes the plaintiff and, answering the cross-complaint of the defendant herein, alleges that the said cross complaint and the cause of action therein set out are barred by the provisions of sections 318, 319, 320, 321, 322, 325 of the Code of Civil Procedure of the State of California.

38 Plaintiff denies, according to information and belief, that the Mexican government ever granted the Rancho San Jose, in Los Angeles county, California, to Ygnacio Palomares and Ricardo Vejar.

Denies that the court of the first instance of the city of Los Angeles, by its judgment duly made or given, ever decreed that said tract of land in controversy herein, or said Rancho San Jose, or San Jose Addition, should be partitioned between said parties, or that they each should hold and own his share and portion in severalty.

Denies that on the 12th day of February, 1846, or at any other time, said court, after proceedings duly had for that purpose, by its

judgment duly made and given, did decree or set apart to each of the said three parties alleged, in severalty, his share or portion of said two ranchos.

Denies that thereafter each of said parties alleged in said cross-complaint entered upon or continued to occupy exclusively the part or portion so alleged to be allotted to him, or claiming the sole or exclusive title thereto in severalty, or that they, or their heirs or assigns, or representatives in said land have respectively recognized said allotment or partition as obligatory or satisfactory to them.

39 That plaintiffs have no information or belief upon the subject sufficient to enable plaintiffs to answer the IV allegation of defendant's cross-complaint, and placing the plaintiffs' denial on that ground, deny—

That thereafter, on the — day of ——, while said Dalton was still the owner, occupant, or possessor of the tract alleged to have been allotted to him, or while he was claiming to own or hold the same to the exclusion of said Palomares or Vejar, or while he was recognizing or adopting the partition so made, or not asserting any claim or right to the part so set off to said Palomares or Vegar respectively, or conceding or recognizing to each the right and ownership of the said tracts so alleged to be set off, that the defendant was induced, by the conduct of said Dalton, to buy the land alleged in the cross-complaint, or that any of the acts of said Dalton induced said defendant to buy said land.

Den*ies* that ever since the date of the defendant's said purchase *he* has claimed or held or maintained open, notorious, exclusive, or adverse possession of the tract of land so purchased, claiming the same against the said Dalton, the plaintiff, or all the world.

Den*ies* that the heirs of said Palomares recognize said partition.

40 Den*ies* that the said commissioners referred to declared *his* claim to said alleged allotment to be valid, or confirmed the same to *him*, or that the said district court of the United States affirmed any decree for said alleged allotment.

Den*ies* that said commissioners or said court declared or affirmed the claim of said Palomares or said Vejar to the alleged allotted tracts to be valid. Plaintiffs allege that said commission or court had no authority to pass upon the rights of any third persons in or to said land.

Den*ies* that the claim of plaintiffs to an undivided one-third of said ranchos is without foundation or right, or that their title is held in trust for said defendant.

Wherefore plaintiffs ask that the cross-complaint of defendant be denied.

R. M. WIDNEY,
Attorney for Plaintiff-.

STATE OF CALIFORNIA, } ss:
Los Angeles County, }

J. S. Slauson, being first duly sworn, says that he is president of the Los Angeles County Bank, one of the plaintiffs herein; that he has read the foregoing answer to defendants' cross-complaint and

the same is true, except as to the matters therein stated on his knowledge and belief, and as to those matters he believes it to be true.

J. S. SLAUSON.

41 Subscribed and sworn to before me this 19th day of March, A. D. 1881.

A. C. HOLMES,
Notary Public.

Filed April 2, 1881.

Title of court and cause.

MONDAY, *November 7th*, 1881.

F. Palomares and L. A. de Palomares appeared in court, by their attorneys, Messrs. Chapman & Graves and P. C. Tonner, and L. Phillips appeared in court, by his attorneys, Messrs. Thom & Stephens, and, by consent, the following order is entered, to wit, that the cross-complaint filed herein by the said F. and L. A. de Palomares be dismissed, each party paying his own costs with respect thereto. The said F. Palomares and L. A. de Palomares dismiss and abandon that part of their answer in which they claim partition of a tract of land on the southerly side of the Rancho San Jose, each party paying their own costs with respect to that portion of the answer.

Ruling on Demurrers.

Title of court and cause.

FRIDAY, *November 25th*, 1881.

All demurrers of defendants overruled. Ten days to each defendant to answer.

42 *Additional Answer of Plaintiffs.*

Title of court and cause.

Now come the plaintiffs, and, amending the answer of plaintiffs to the cross-complaint of the defendants, Louis Phillips and F. Palomares, herein, allege, in addition to the facts set out in said answer, and as a defense to said cross-complaint, *allege* that subsequent to said purported judgment of the court of the first instance, and to the said purported partition pleaded by said defendant as made in 1846, to wit, in the year 1857, that the district court of the United States in and for the southern district of California, in the case wherein Ygnacio Palomares was plaintiff and the United States was defendant, upon proceedings for the confirmation of the title to the Rancho San Jose and San Jose Addition, the premises herein in suit, to said Palomares, said court, by judgment duly made and given, adjudged and decreed that said Palomares owned an undivided one-third interest in said rancho, which judgment was made and given by said court on February 25th, 1856.

That thereafter said Palomares, by written stipulation in said

case duly made and filed February 23, 1857, stipulated and agreed that the said decree of said court in said case may by order of the court be made final; that thereafter, at the December term of
43 said court of 1856, said court, by its order duly made and given under said stipulation, made said decree of said court final, with leave to said Palomares to proceed thereunder for a patent.

That in the same court, in the case wherein Ricardo Vejar was plaintiff and the United States was defendant, in proceedings for the confirmations of the title of said Vejar to said rancho, said court, on the 25th day of February, 1856, by its decree duly made and given, decreed and adjudicated that said Vegar was the owner of an undivided one-third of said rancho; and thereafter, to wit, on February 23d, 1857, said Vejar, by his attorney in said case, duly stipulated and agreed that the said decree of court may by order of said court be made final; that thereafter, to wit, on February 23d, 1857, the said court, under said stipulation and agreement, duly made its order in said case that said decree be made final, and that said Vejar have leave to proceed to procure a patent thereunder.

That in said court, in the case wherein Henry Dalton was plaintiff and the United States was defendant, in proceedings for the confirmation of the title of said Dalton to said rancho, by decree duly made and given on the 6th day of March, 1856, adjudged and decreed that said Dalton was the owner of an undivided one-third of said rancho.

44 That thereafter, on June 4th, 1847, said Dalton, by his attorney in said case, by stipulation in writing therein duly made and filed, stipulated and agreed that said court may make and order that said decree become final, and that said Dalton have leave to proceed under said decree as final; that thereafter, on June 4th, 1857, in said case, said court under said stipulation duly made its order that said decree become final, and that said Dalton have leave to proceed thereunder to procure a patent for said lands, all and each of which decree, stipulation, and orders are hereby pleaded by plaintiff as *res adjudicata* of the tenure and interests of the parties herein; that the plaintiff and defendants are the successors in interst of said Palomares, Vejar, and Dalton by conveyances subsequent to said decrees, stipulations, and orders.

That pursuant to said decrees, stipulations, and orders said Dalton and Palomares and Vejar, and their successors in interest, and predecessors in interest of plaintiff and defendants herein, proceeded and obtained from and accepted from the United States patents, one for each of said ranchos, granting and conveying to said parties each an undivided one-third interest in and to said ranchos, under which patents plaintiffs and defendants have held and claim said title to said ranchos, and defendants are estopped to deny the said title in common under said acts and said patents.

45 Plaintiff further alleges that a large area of some 4,000 acres, more or less, of the land purported to have been partitioned by said court of the first instance in 1846, was public land of the government of Mexico, and was not in the jurisdiction of said

court to be partitioned, and said government was a joint owner and tenant in common at that time in all of the lands purported to have been partitioned, and said government not made a party thereto, and a large area of the land then purported to have been partitioned to said Dalton, to wit, some 2,000 acres, more or less, did not belong to said Dalton, Vejar, and Palomares, and was finally excluded from the claim of said ranchos by the issuance of said patents; that said purported decree of said court of first instance was, among other things, void for want of jurisdiction over the subject-matter and for want of proper parties thereto.

Wherefore plaintiff prays that said cross-complaint be denied, and that said defendant take nothing thereby.

R. M. WIDNEY,
Attorney for Plaintiff.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss.:*

J. S. Slauson, being first duly sworn, says that he is presi-
46 dent of the corporation plaintiff, Los Angeles County Bank; that he has read the foregoing answer to defendant's cross-complaint; that the facts therein stated are true of his own knowledge, except as to the matters therein stated on his information, and as to those matters he believes it to be true.

J. S. SLAUSON.

Subscribed and sworn to before me this 12th day of December, 1881.

A. C. HOLMES, *N. P.* [SEAL.]

Filed December 15, 1881.

Answer of Henry Dalton to Cross-Complaint of Phillips.

Title of court and cause.

The defendant, Henry Dalton, answers the cross-complaint of the defendant, Louis Phillips, and denies each and every allegation thereof.

SMITH, BROWN & HUTTON,
Attorneys for Defendant Dalton.

Filed December 7, 1881.

47 *Answer of Henry Dalton to Cross-Complaint of Palomares.*

Title of court and cause.

The defendant, Henry Dalton, answers the cross-complaint of his codefendants, Francisco Palomares and Lugarda A. de Palomares, and denies each and every allegation thereof.

SMITH, BROWN & HUTTON,
Attorneys for Defendant Dalton.

Filed December 7, 1881.

A. E. Sepulveda Substituted for Palomares, Deceased.

Title of court and cause.

MONDAY, *December* 6, 1882.

A. E. Supelveda, administrator of the estate of Francisco Palomares, deceased, is hereby substituted in lieu of said deceased defendant, Francisco Palomares.

Motion of F. H. Howard, Esq., to reopen the case set for hearing on February 9, 1882, at 10 c'clock a. m.

48 *Findings of Fact.*

Title of court and cause.

The above-entitled case came on regularly for trial before the court without a jury the — day of December, 1881. By consent of counsel for the various parties, Francisco Palomares and Lugarda A. de Palomares having been duly substituted for the defendant, Trinidad Yorba, as his successor in interest, and Andronico Sepulveda having been substituted as administrator of the estate of said Francisco Palomares, deceased, the case having been duly tried, the court makes the following findings of facts:

First.

The plaintiffs are separate corporations duly incorporated under the laws of this State, with their principal place of business in Los Angeles county, California, having duly filed the original articles of incorporation in the proper office in said county, with power to hold and convey and buy real estate, and in good faith acting as such corporation under their certificate of incorporation.

Second.

That at the time of commencing this action the Mound City Land and Water Association was the owner of an undivided one-third of the Rancho San Jose and San Jose Addition, in Los Angeles county, California.

49 That the patents for said ranchos were duly issued by the United States Government—to wit, for the Rancho San Jose on January 20, 1875, and for the Rancho San Jose Addition on December 4, 1875—to Henry Dalton, Ygnacio Palomares, and Ricardo Vejar, conveying to them and their heirs and assigns each an undivided one-third of said ranchos.

That by proper conveyances the Mound City Land and Water Asssociation, Louis Phillips, and Lugarda A. de Palomares have become the owners of said rancho from said patentees.

That the other defendant, Henry Dalton, claims no interest in the premises.

That the plaintiff, Los Angeles County Bank, has, as alleged in the complaint, a mortgage on the interest of said Mound City Land and Water Association in said rancho, recorded in Book 21, p. 1, of Mortgages, Los Angeles county records.

That said Mound City Land and Water Association, said Louis Phillips, and said Lugarda A. de Palomares are tenants in common in said rancho.

Third.

That there is no misjoinder of parties plaintiff or defendant in the action.

Fourth.

That the owners of said premises are and have been ten-
50 ants in common, claiming under the common title at all times and at present; that said ranchos are contiguous and form one body of land.

Fifth.

That the said ranches were inchoate grants by the Mexican government for lands within larger not finally located boundaries, leaving the act of final survey, segregation, and location to the government of Mexico and its successor, the Government of the United States.

Sixth.

The said ranchos, or either of them, were not at any time by any judgment duly made or given at any time by the court of the first instance, or any other court having jurisdiction thereof, partitioned as alleged in the pleadings of the defendants, or either of them, or at all partitioned among the owners of said ranchos.

Seventh.

That said Henry Dalton, Ygnacio Palomares, and Ricardo Vejar duly presented their petitions to the United States board of land commissioners in 1853, asking the confirmation of a larger area of land embracing said ranchos to said parties (they being then the owners of said ranchos) in three segregated parcels or tracts, claiming the said ranchos to have been partitioned as alleged in the
51 pleadings of the defendants herein. Said matters duly came by appeal before the United States district court for the southern district of California on the appeal of said parties, and the said court, having duly heard the matter by its decree duly made and entered, confirmed to each of said persons, to wit, Henry Dalton, Ygnacio Palomares, and Ricardo Vejar, an undivided one-third of each of said ranchos; and thereafter, to wit, in 1856, each of said parties, by stipulation duly signed and filed in said cases, stipulated and agreed with the attorney for the United States that said decrees should become final, with leave to said parties to proceed under said decree as a final decree and thereupon said district court duly made and entered its order; that the appeal to the United States Supreme Court therein made be dismissed, and the decrees aforesaid were made final, with leave to said parties to proceed thereunder as a final decree. That thereafter said parties and their successors in interest proceeded under said decrees, and solicited and obtained the United

States patents for said ranchos, as hereinbefore found, said patents reciting said decrees of said United States district court confirming an undivided one-third of each of said ranchos to each of said parties. Said defendants and plaintiff claim title and hold under and by virtue of said decrees and patents.

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Eighth.

That the Mound City Land and Water Association is the successor in interest of said Henry Dalton; that Francisco Palomares and Lugarda A. de Palomares are the heirs, and Lugarda A. de Polomares is successor in interest of said Ygnacio Palomares; that Louis Phillips is the successor in interest of said Ricardo Vejar.

Ninth.

That in 1864 said Phillips by quit-claim deed acquired the said interest of Vegar in said ranchos, said deed referring to the said Mexican grant and said decrees of said United States district court for full description of the premises conveyed; that in purchasing said interest said Phillips had the facilities for complete examination of the title, and was not misled by any act or declaration of Henry Dalton; that said Dalton did not make any admissions or declarations with any intention to deceive said Phillips, or with such carelessness or culpable negligence as to amount to constructive fraud; that said Phillips was not misled or deceived by said Dalton in any matter relating to the title to said premises at any time; nor did said Dalton at any time after said decree of said U. S. district court recognize or accept or acquiesce in any partition or partition lines as between the various owners of said property, or do

53

any act as alleged in the pleadings of defendants or otherwise whereby he was estopped from claiming to own an undivided one-third of said ranchos as tenants in common.

Tenth.

Said Lewis Phillips did not buy of the vendee of said Vegar any segregated part of said rancho, nor did said Dalton at the time of said purchase by said Phillips disclaim any interest in any segregated tract or part of said ranchos.

Eleventh.

That the purported decree of partition of 1846, pleaded by defendant, embraced some 10,000 acres of land which did not belong to said ranchos or said parties, but was public land. Said purported decree and said court of the first instance attempted to establish the out boundaries of said ranchos and to segregate them from the public lands of the government of Mexico, and purported to allot the said Dalton and Palomares in their portion of the ranchos said 10,000 acres of land, which were never included in the original grant of said ranchos, and were no part thereof. Said purported partition was void because the grant was not approved by the departmental assembly. No agreement was ever made by the parties as to parti-

tion, but as a matter of temporary convenience more or less regard was had to the old lines of the purported partition as a
54 mere matter of temporary use. Until final confirmation and survey could be had the occupation of the said various owners, plaintiff and defendants, has been in subordination to the legal title claiming under said decree of the United States district court and said patents; that no demand to be let into possession or refusal were made or given by any of the owners at any time, nor was any notice of adverse holding given, and this action is not barred by section 318 of the Code of Civil Procedure of the State of California.

Twelfth.

That subsequent to the said purported partition of 1846 the said owners in 1853 duly presented their claims to the board of land commissioners for confirmation according to said purported partition. Said board confirmed them according to said partition. Thereafter the claimants duly appealed to the United States district court for the southern district of California, and said district court confirmed the claims for an undivided one-third to each of said owners, as hereinbefore found, which decree, by stipulation and agreement of the various owners, was made final, and said owners proceeded thereunder to and obtained the United States patent for said ranchos and claim thereunder. Said decree became and is *res adjudicata* of the tenancy in common in this case.

55 Thirteenth.

That under the purported partition pleaded by defendants, and under the patents as issued, there would fall to Lewis Phillips about 9,000 acres, of the value of over $30 per acre; to defendant Palomares about 10,000 acres, worth over $30 per acre, and to the Dalton interest about 7,000 acres, of the value of $10 per acre, or less, considering quality of soil and facilities of irrigation, and not counting any improvements.

Fourteenth.

That said Lewis Phillips has sold to various persons certain small specific tracts of land, by metes and bounds, on the southeast portions of the Rancho San Jose, amounting to a very small portion of his interests in said rancho, and the plaintiff herein duly consented in open court, on the trial of this case, that any partition granted or had hereunder should be so had so far as plaintiff's interest is concerned, as to set off to said Phillips his allotment of lands so as to include therein the lands so sold by him, so as to make said deeds and sales by him effectual, and that partition be so made as to give all parties the benefit of all their improvements; that said sales by said Phillips are in the tracts known as the Romona tract and as the Spadra tract, situated in the southeasterly part of the Rancho San Jose.

56 Fifteenth.

It was further stipulated between plaintiff and defendant, Henry Dalton, that any question as to any interest of Henry Dalton in the

said lands as against the Los Angeles County Bank, on certain matters between them, should not be affected, one way or the other, by the judgment in this case.

Sixteenth.

That, other than is hereinbefore found, there was no judgment or ownership or occupation in severalty of any of said lands, or any part thereof, in favor of Palomares, Vejar, Dalton, or any of their successors in interest; that said Mound City Land and Water Association and said Lewis Phillips and said Lugardo A. de Palomares have a legal and valid claim and ownership as tenants in common in and to the whole of said ranchos and every part thereof; and neither said Phillips or said Palomares own or occupy in severalty any portions of said ranchos; that said Francisco Palomares is the husband of said Lugardo A. de Palomares; that since the trial of this case said Francisco Palomares died, and Andronico Sepulveda has been duly substituted as the administrator of the estate of Francisco Palomares, and in his place in this suit, all parties being in court and waiving notice of substitution.

57 *Conclusions of Law.*

1st. That plantiffs are entitled to a partition of said ranchos.

2d. The grant to Palomares, Vejar, and Arenas in 1840 never was approved by the departmental assembly, and was therefore inchoate at the — of change of flags. The grant of 1840 by the Mexican government constituted said grantees tenants in common, and being a grant with different grantees and for a different extent from that of the original grant of April, 1837, could not have been definitely valid under the regulations of 1828 without an approval by the departmental assembly.

3d. The action of the Land Department was final as to the survey and location of the boundaries, and concluded by the patents.

4th. The decrees of the United States district court constituted the confirmees and patentees tenants in common.

Wherefore it is ordered that an interlocutory decree be entered herein for the partition of said Ranchos San Jose and San Jose Addition.

V. E. HOWARD,
Judge of Said Court.

Filed February 28th, 1882.

58 *Judgment.*

Title of court and cause.

The above-entitled case came on regularly to be heard before the court without a jury by consent of counsel for the various parties. Francisco Palomares and his wife, Lugardo A. de Palomares, having been first duly substituted for and as the successor in interest of Trinidad Yorba, and Andronico Sepulveda being substituted as administrator of the estate of said Francisco Palomares, who died since

his substitution herein, it being first shown to the court that notice of the pending of this action was duly recorded by plaintiff, as required by law, on January 19, 1880, the case was duly tried by the court, and its finding of facts and conclusions of law were duly filed; and the court having overruled the objections, which were reserved for its further consideration and ruling:

It is ordered, adjudged, and decreed that the Ranchos San Jose and San Jose Addition, in Los Angeles county, California, as bounded and described in the patents therefor duly issued by the United States, and recorded in Book 2, pp. 148 and 268, of patents, Los Angeles county records, which ranchos are contiguous and form one body of land, are held and owned by the Mound City Land and Water Association, Lewis Phillips and Trinidad A. de Palo-
59 mares, as tenants in common, each owning an undivided one-third of said ranchos; that the one-third interest owned by the Mound City Land and Water Association is subject to the lien of a mortgage owned by the Los Angeles County Bank, recorded in Book 21, p. 1, of mortgages of Los Angeles county records, to which reference is hereby made for a full description thereof.

That the one-third interest owned by Louis Phillips is subject to certain sales of specific small tracts sold by him by specific metes and bounds, and located in the tracts known by the names Pomona tract and the Spadra tract, situated in the southeasterly portion of the Rancho San Jose.

It is further ordered, adjudged, and decreed that in the partition of said ranchos the said one-third interest of said Phillips be set off so as to include said tracts known as the Pomona tract and the Spadra tract, so as to make good the sales of said Phillips aforesaid.

It is further ordered that said Ranchos San Jose and San Jose Addition be partitioned among said parties plaintiff and defendants, The Mound City Land and Water Association, said Lugardo A. de Palomares, and said Louis Phillips, allotting to each one in severalty one-third of the area of said two ranchos, quantity and quality considered, and so locating the said allotments as to give to
60 each of said persons the benefit of any improvements he may have placed on any part of said premises, so far as the same may be done without injury to the cotenants, and so as to include in said allotment to said Phillips the said two tracts known as the Pomona tract and as the Spadra tract, located in the southeast part of the Rancho San Jose, so far as the same may be done without injury to the cotenants.

It is further ordered and decreed that E. N. McDonald, Antonio F. Coronel, and Wm. Bowman, three disinterested and competent persons, be, and hereby are, appointed commissioners to make partition of said lands as hereinbefore set out, and in the manner provided by law in such cases; that said commissioners report their proceedings to this court for the further action of the court.

It is further ordered and adjudged that the other defendants, Trinidad Yorba, Andronico Sepulveda, administrator of the estate of Francisco Palomares, deceased, and Henry Dalton, have no interest or ownership in the premises.

It is further ordered that plaintiffs recover their costs heretofore incurred from the defendants, Louis Phillips and Lugardo A. de Palomares, taxed at $200.25.

61 It is ordered that a certified copy of this decree be issued to said commissioners as their sufficient authority to proceed hereunder.

V. E. HOWARD,
Judge of said Court.

Filed March 14th, 1882.

Entered March 14th, 1882.

Statement on Motion for New Trial.

Title of court and cause.

This cause came on for trial on the — day of December, 1881, before the court sitting without a jury, a jury having been duly waived. At said trial the following proceedings were had:

Plaintiff read in evidence the following document:

The United States of America to all [to] whom these presents shall come, Greeting:

Whereas it appears, from a duly authenticated transcript filed in the General Land Office of the United States, that, pursuant to the provisions of the act of Congress approved the third day of March, anno Domini one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of
62 California," Henry Dalton filed his petition on the twenty-ninth day of September, anno Domini one thousand eight hundred and fifty-two, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of Los Angeles, in which petition he claimed the confirmation of his title to a tract of land called Azusa, situated in the county of Los Angeles and State aforesaid, said claim being founded on three Mexican grants, the first grant in favor of Ygnacio Palomares and Ricardo Vejar, for the place called San Jose, made on the fifteenth day of April, anno Domini one thousand eight hundred and thirty-seven, by Juan B. Alvarado, then governor *ad interim* of California; the second grant in favor of Ignacio Palomares, Ricardo Vejar, and Louis Arenas, for the land called San Jose, ceded by decree of the 15th of April, 1837, and one additional league of grazing land, made on the fourteenth day of March, anno Domini one thousand eight hundred and forty, by Juan B. Alvarado, then constitutional governor of the department of the Californias; and the third grant in favor of Luis Arenas for one league of grazing land, made on the eight- day of November, anno Domini one thousand eight hundred and forty-one, by Manuel Jimeno, then first proprietary member of the most excellent departmental assembly in exercise of the
63 government of the same; and whereas the board of land commissioners aforesaid, on the 31st day of January, anno

Domini one thousand eight hundred and fifty-four, in the cause entitled "Henry Dalton *vs.* The United States," rendered its decision as follaws, to wit:

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is valid, and it is therefore hereby decreed that the same be confirmed; the land of which confirmation is hereby made is that known by the name of Azusa, situated in Los Angeles county, and now in the occupancy of said petitioner, and is bounded and described as follows, to wit: according to a map of the same annexed to the testimonial showing a partition of the place called San Jose between Ignacio Palomares, Ricardo Vejar and Henry Dalton, which is on file in this case, which map is made a part of this decree, the land hereby confirmed being the portion therein designated as the land of Enrique Dalton, beginning at the hill called San Felipe at a landmark in said map or diagram marked A, running thence south twenty-one degrees west to a a landmark Go, distance two thousand and one hundred varas; thence south thirty-six degrees east six thousand three hundred and twenty-five varas to a point called Lindero Colorado; thence east eighteen degrees north to a live-oak tree, distance two thousand six hundred varas; thence north ten degrees east
64 eleven hundred varas to a point marked U; thence east thirty-four degrees fifteen minutes south five thousand three hundred and twenty-five varas to the land marked H; thence north thirty-two degrees fifteen east six thousand five hundred and twenty-five varas to a place and landmark in the mountains, which point is marked X; thence westwardly, following said mountains so as to take in the Cañadas, to the place of beginning, containing three square leagues of land, more or less; which decree or decision having been taken by appeal to the district court of the United States for the southern district of California, the said district court, in the cause entitled "Henry Dalton, appellee, *ads.* The United States, appellant," rendered its decision as follows, to wit:

This cause coming on to be heard on appeal from the final decision of the United States board of land commissioners to ascertain and settle the private claims in the State of California, under an act of Congress approved March 3, 1851, on a transcript of the proceedings and decision of said board, and of the papers and evidence upon which said decision was founded, and it appearing to the court that said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed that the said de-
65 cision of the said board of commissioners be, and the same hereby is, affirmed; and it is further adjudged and decreed that the claim of the above-named appellee is good and valid, and the same is hereby confirmed to him; the land of which confirmation is made being as follows: One equal undivided third part of the lands of San Jose granted by Juan B. Alvarado, Governor of California, to Ygnacio Palomares and Ricardo Vegar on the fifteenth day of April, 1837, and regranted by said Governor, Juan B. Alvarado, on the 14th day of March, 1840, to the said Palomares

and Vejar, and to Louis Arenas, according to the boundaries described in the grant first mentioned and the map to which the same refers, which boundaries more fully appear from the act of judicial possession as follows: Commencing at the foot of a black willow tree, which was taken for a corner, and between the limbs of which a dry stick was placed in the form of a cross; thence westerly nine thousand seven hundred (9,700) — to the foot of the hills called "Los Lomas de la Puente," taking for a landmark a large walnut tree on the slope of a small hill on the side of the road which passes from the said San Jose to the Puente, making a cut (caladura) on one of its limbs with a hatchet; thence northerly ten thousand four hundred (10,400) varas to the creek (arroya) of San Jose, opposite a high hill where a large oak was taken as boundary, in which was placed the head of a beef and some of its limbs chopped;
66 thence easterly ten thousand six hundred (10,600) varas to the creek (arroyo) of San Antonio, taking for a landmark two young cottonwoods which stand near each other, on the bark of which crosses were made; thence southerly nine thousand seven hundred (9,700) varas to the place of beginning; also one undivided third part of the lands granted to Ygnacio Palomares, Ricardo Vejar, and Luis Arenas, in addition to the lands above described by Juan B. Alvarado, Governor of the department of the Californias, according to the boundaries described in said grant and the map to which the grant refers to the extent of one square league of land, and no more, within the boundaries given in the act of judicial possession as follows, to wit: Commencing at an oak, which is a landmark in the "ancient western boundary of San Jose;" thence westerly five thousand (5,000) varas to the point of a small hill where a landmark was placed; thence northerly five thousand (5,000) varas to a small red hill, called the Lomas de San Felipe, which was designated for a landmark; thence easterly five thousand (5,000) varas to the old boundary of San Jose, and also all the lands granted to Luis Arenas by Manuel Jimeno, Governor *pro tem.* of the department of the Californias, on the 8th day of November, 1841, to the extent of one square league of land, and no more, within the boundaries described in the grant and map to which the said grant refers,
67 to wit: The sierra on the north, the western lines of the lands last above described on the east, the road of San Jose on the south, the river of Azusa and the boundary of Andres Duarte on the west.

And thereafter the Attorney General of the United States having given notice that appeal would not be prosecuted in the cause entitled "Henry Dalton, appellee, *ads.* The United States, appellants," the aforesaid district court, at its June term, anno Domini one thousand eight hundred and fifty-seven, ordered that the order of appeal heretofore granted in this cause be, and the same is hereby, vacated, and the appellee have leave to proceed under the decree of this court heretofore rendered as a final decree," whereby the proceedings of court upon title became final;

And whereas it further appears that Ygnacio Palomares filed his petition on the twenty-ninth day of September, anno Domini one

thousand eight hundred and fifty-two, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of Los Angeles, in which petition he claimed the confirmation of his title to an undivided third part of the Rancho of San Jose, situated in the county of Los Angeles and State aforesaid, said claim being founded on two Mexican grants,

68 the first grant in favor of himself and Ricardo Vejar for the place called San Jose, made on the fifteenth day of April, anno Domini one thousand eight hundred and thirty-seven, by Juan B. Alvarado, then Governor *ad interim* of California, and the second grant in favor of himself, Ricardo Vejar, and Luis Arenas for the land called San Jose, granted by decree of April 15th, 1837, with an addition of one league of grazing land, made on the fourteenth day of March, anno Domini one thousand eight hundred and forty, by Juan B. Alvarado, then Constitutional Governor of the department of the Californias;

And whereas the board of land commissioners aforesaid, on the thirty-first day of January, anno Domini one thousand eight hundred and fifty-four, in the cause entitled Ygnacio Palomares *vs.* The United States, rendered its decision as follows, to wit: In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is valid, and it is therefore hereby decreed that the same be confirmed. The land of which confirmation is hereby made is a portion of the place called San Jose, situated in Los Angeles county, and now in the occupancy of said petitioner, and is bounded and described as follows, according to the map or diagram of the same annexed to the testimonial showing a partition of the place called San Jose between Ricardo

69 Vejar, Henry Dalton, and said Ygnacio Palomares, which map and testimonial are filed by said Ricardo Vejar in case No. 388, before this commission and are here referred to and to be taken as a part of this decree, the land hereby confirmed being the portion described on said map as the land of Ygnacio Palomares: Beginning at a point where the arroyo de San Antonio passes out of the mountain, where is fixed a landmark at the point marked C on said map; thence running south nineteen degrees west eleven thousand seven hundred and thirty varas to a landmark marked Y on said map; thence west thirty-four degrees fifteen minutes south four thousand one hundred and fifteen varas to a landmark marked H on said map; thence north thirty-two degrees fifteen minutes east six thousand five hundred and twenty-five varas to a place in the mountain where is a landmark at the point marked X on said map; thence along the said mountain so as to take in the Cañdas to the place of beginning at the point marked C, containing about two square leagues of land, more or less, which decree or decision having been taken by appeal to the district court of the United States for the southern district of California, the said district court at its December term, anno Domini one thousand eight hundred and fifty-five, in the cause entitled Ygnacio Palomares, appellee, *ads.* The United States, appellant, rendered its decision as follows, to wit: "This case coming on

to be heard on appeal from the final decison of the United
70 States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, on a transcript of the proceedings and decision of said board and the papers and evidence upon which said decision was founded and upon additional evidence taken in this court; and it appearing to court that said transcript and notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed by the court that said decision of said board of commissioners be, and the same is hereby, affirmed; and it is further adjudged and decreed that the title of the said appellee in this to the lands claimed therein is good and valid, and the same is hereby confirmed to him, the lands of which confirmation is hereby made being the one equal undivided one-third part of the following tracts of land, to wit: That certain tract of land lying in the county of Los Angeles, called San Jose, originally granted by Juan B. Alvarado, Governor of California, to the said appellee and one Ricardo Vejar, on the 15th day of April, 1837, and delineated in the (deseño) map attached to the expediente, and which tract of land was regranted by the said Governor Juan B. Alvarado to the said appellee and Ricardo Vejar and one Luis Arenas on the 14th day of
71 March, A. D. 1840, together with an augmentation or addition of one league of land (deganado mayor) on the west next to the mountains of San Gabriel, as appears in the map (deseño) accompanying the expediente, and which said first-mentioned and granted tract of land is bounded and described in the testimonial of juridical possession in this case, as follows, to wit: Commencing at the foot of a black willow tree, which was taken for a corner, and between the limbs of which a dry stick was placed in the form of a cross; thence from the east towards the west nine thousand seven hundred (9,700) varas to the foot of the hills called Las Lomas de la Puente, taking for a landmark a large walnut tree on the slope of a small hill on the side of the road which passes from the said San Jose de la Puente, making a cut (caladura) on one of its limbs with a hatchet; thence in a direction about from south to north ten thousand four hundred (10,400) varas to the arroyo (creek) of San Jose, opposite a high hill, where a large oak was taken as a boundary, in which was fixed the head of a beef and some of its limbs chopped; thence in a direction about from west to east ten thousand six hundred (10,600) varas to the arroyo (creek) of San Antonio, taking for a corner some cotton-wood trees which are near each other, marking crosses in the bark; thence about from north to south nine thousand seven hundred (9,700) varas
72 to the foot of the black willow, the place of beginning; the said second tract of land, or addition of one league, being bounded and described in the testimonial of juridical possession in this case, as follows, to wit: Commencing on the ancient western boundary of San Jose, at the foot of an oak which is an old landmark, from which the line was run from east to west five thousand (5,000) varas to a point of a small hill which was taken for a corner

—this angle adjoining the Puente; thence from south to north five thousand (5,000) varas, to the foot of a small red hill called "la loma de San Felipe," where a mark was made; thence from west to east five thousand (5,000) varas to the old boundary of San Jose; provided that the additional tract is confirmed to the extent of one league only, within the boundaries described in the juridical possession; and whereas it further appears that Ricardo Vejar filed his petition on the ninth day of October, anno Domini one thousand eight hundred and fifty-two, with the commissioners, to ascertain and settle the private land claims in the State of California, sitting as a board in the city of Los Angeles, in which petition he claimed the confirmation of his title to a part of a certain tract of land known by the name of San Jose, situate in the county of Los Angeles and State aforesaid, said claim being founded on two Mexi-
can grants—the first grant in favor of himself and Ignacio
73 Palomares, for the land known by the name of San Jose, made on the fifteenth day of April, anno Domini one thousand eight hundred and thirty-seven, by Juan B. Alvarado, then Constitutional Governor of the department of the State of California, and the second grant in favor of himself, Ygnacio Palomares, and Louis Arenas, for the land called San Jose, granted by decree of the 15th day of April, 1837, and one league, "deganado mayor," by augmentation, made on the fourteenth day of March, anno Domini one thousand eight hundred and forty, by Juan B. Alvarado, then Constitutional Governor of the department of the Californias; and whereas the board of the land commissioners aforesaid, on the thirty-first day of January, anno Domini one thousand eight hundred and fifty-four, in the cause entitled Ricardo Vejar *vs.* The United States, rendered its decision as follows, to wit:

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is valid, and it is, therefore, hereby decreed that the same be confirmed. The land of which confirmation is hereby made is a portion of the place called San Jose, situated in Los Angeles county, and now in the occupancy of said petitioner, and is bounded and described as follows, according to the map or diagram of the same annexed to the
testimonial, showing a partition of the place called San Jose
74 between Ygnacio Palomares, Henry Dalton, and said Ricardo Vejar, which map and testimonial are filed in this case and made a part of this decree, the land hereby confirmed being the portion designated on said map as the land of Ricardo Vejar—beginning at a rock in a small hill in the boundary of the Rancho del Chino at the mark D on said map, and running thence west thirty-seven degrees north six thousand six hundred and fifty varas to a point at the Por Tozuelito, where there is a rock to mark the boundary at the place marked E on said map; thence west thirty-eight degrees north three thousand nine hundred and twenty varas to a walnut tree on the slope of a small hill in the boundary of San Jose de la Luz Sinores at the point marked P on the map; thence north twenty-four degrees thirty-five minutes west, in the direction of the oak at the water hole, and to said oak six thousand two hundred

and ninety varas, at the point marked *encinee* on said map; thence north ten degrees east one thousand one hundred varas to the point marked N on said map; thence east thirty-four degrees fifteen minutes south nine thousand four hundred and forty varas to the place marked Y on said map; thence east thirteen degrees south five thousand seven hundred and thirty varas to the point marked L on said map; thence south nineteen degrees west six thousand varas to the place of beginning at the point marked D
75 on said map, containing 65,268,166 varas of land, be the same more or less; which decree or decision having been taken by appeal to the district court of the United States for the southern district of California, the said district court, at its December term, anno Domini one thousand eight hundred and fifty-five, in the cause entitled Ricardo Vejar, appellate, *ads.* The United States, appellant, — its decisions as follows, to wit:

This cause coming on to be heard on appeal from the final decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California under an act of Congress approved March 3d, 1856, on a transcript of the proceedings and decisions of said board and of the papers and evidence upon which said decision was founded and upon additional evidence taken in this court, and it appearing to the court that said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed by the court that said decision of said board of commissioners be, and the same is, affirmed; and it is further adjudged and decreed that the title of the said appellee in this case to the lands claimed therein is good and valid, and the same is hereby confirmed to him, the lands of which confirmation is hereby made being the one equal undivided
76 one-third part of the following tracts of land, to wit:

That certain tract of land lying in the county of Los Angeles, called San Jose, originally granted by Juan B. Alvarado, Governor of California, to the said appellee and one Ygnacio Palomares on the 15th day of April, 1837, and delineated in the (deseño) map attached to the expediente, and which tract of land was granted by the said Governor, Juan B. Alvarado, to the said appellee and Ygnacio Palomeres and one Lewis Arenas on the 14th day of March, A. D. 1840, together with an augmentation or addition of one league of land (sitio de ganado mayor) on the west next to the mountain of San Gabriel, as appears in the map (deseño) accompanying the expediente, and which said first mentioned and granted tract of land is bounded and described in the testimonial of juridical possession in this case, as follows, to wit: Commencing at the foot of a black willow tree, which was taken for a corner, and between the limbs of which a dry stick was placed in the form of a cross; thence from the east towards the west nine thousand seven hundred (9,700) varas to the foot of the hills called "La Lomas de la Puente," taking for a landmark a large walnut tree on the slope of a small hill on the side of the road which passes from said San Jose to La Puente, making a cut (caladura) on one of its limbs with a hatchet; thence in a

direction about from south to north ten thousand four hun-
77 dred (10,400) varas to the arroyo (creek) of San Jose, opposite a high hill, where a large oak was taken as a boundary, in which was fixed the head of a beef and some of its limbs chopped; thence in a direction about from west to east ten thousand six hundred (10,600) —, to the arroyo (creek) of San Antonio, taking for a corner some young cottonwood trees which are near each other, marking crosses in the bark; thence about from north to south nine thousand seven hundred (9,700) varas, to the foot of the black willow tree, the place of beginning, the said second tract of land or addition of one league being bounded and described in the testimonial of the juridical possession in this case as follows, to wit: Commencing at the ancient western boundary of San Jose, at the foot of an oak, which is an old landmark, from which the line is run from east to west five thousand (5,000) varas to a point of a small hill, which was taken for a corner, this angle adjoining the Puente; thence south to north five thousand (5,000) varas to the foot of a small red hill called "La Loma de San Felipe," where a mark was made; thence from west to east five thousand (5,000) varas to the old boundary of San Jose, provided that the additional tract is confirmed to the extent of one league only within the boundaries described in the juridical possession.

And thereafter, the Attorney General of the United States
78 having given notice that appeal would not be prosecuted in the cause entitled "The United States, appellant, *vs.* Ricardo Vejar, appellee," the aforesaid district court, at its December term, anno Domini one thousand eight hundred and fifty-eight, ordered, adjudged, and decreed that the order granting an appeal to the Supreme Court heretofore made in this cause be, and the same is hereby, vacated, and that the claimant have leave to proceed under the decree of this court heretofore rendered in this cause as under a final decree. Whereby the proceedings of court upon title became final.

And whereas, under the thirteenth section of said act of the third of March, anno Domini one thousand eight hundred and fifty-one, and the supplemental legislation, and in accordance with the proceedings had pursuant to said act and supplemental legislation, there has been deposited in the General Land Office a return, with the descriptive notes and plat of the survey of the said claim confirmed as aforesaid, authenticated by the signature of the United States surveyor general of the State of California, which descriptive notes and plat of survey are in the words and figures as follows, to wit:

(Here follows in said patent a description of the land patented by calls and monuments, being the same tract indicated on the map hereinafter mentioned, introduced in evidence by the plain-
79 tiff as the San Jose ranch, containing 22,380.40 acres.)

And whereas there has been deposited in the General Land Office of the United States a certificate dated the 22d day of May, anno Domini one thousand eight hundred and seventy-four, from the clerk of the district court of the United States for the district of

California, in which it is certified that since the filing and entering of the decree confirming the claim in the cause entitled The United States *vs.* Ygnacio Palomares, S. D., No. 122, no further proceedings have been had in this court in said cause, as appears by the docket entries thereof now remaining of record in my office:

Now know ye that the United States of America, in consideration of the premises, and pursuant to the provisions of the act of Congress aforesaid of the third of March, anno Domini one thousand eight hundred and fifty-one, and the legislation supplemental thereto, have given and granted, and by these presents do give and grant, unto the said Henry Dalton, Ygnacio Palomares, and Ricardo Vegar, and to their heirs, the tract of land known by the name of "San Jose," embraced and described in the foregoing survey, but with the stipulation that in virtue of the fifteenth section of the said act neither the confirmation of this said claim nor this pat-
80 ent shall affect the interests of third persons; to have and to hold the said tract known by the name of San Jose, with the appurtenances, unto the said Henry Dalton, Ygnacio Palomares, and Ricardo Vegar, and to their heirs and assigns, forever, with the stipulation aforesaid.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twentieth day of January, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the ninety-ninth.

By the President:

U. S. GRANT,
By S. D. WILLIAMSON, *Secretary.*

[SEAL.]
S. K. LIPPINCOTT,
Recorder of the General Land Office.

Recorded vol. 10, p. 16, No. 40, inclusive.

A full, true, and correct copy of the original, recorded at the request of Francisco Palomares August 13th, 1877, at 23 minutes past 4 p. m.

CHAS. E. MILES,
County Recorder,
By GEO. E. GARD, *Deputy.*

81 Plaintiff then read in evidence the United States patent for the tract marked on said map "Addition to San Jose," which said patent contains all the recitals set out above in the patent to the San Jose, as having taken place before the U. S. land commissioners and the district court on appeal; also the same language as in the decree of the U. S. court as to the confirmation of an undivided one-third to each of the grantees, Palomares, Vejar, and Dalton; also said decree of the U. S. district court, copied in said patent, concludes as follows: Provided, that the additional tract is confirmed as to one league only within the boundaries; also, the same recitals with re-

spect to the deposit in the General Land Office of the return and descriptive notes authenticated by the surveyor general of California. (Then follows in said patent the calls, by metes and bounds, of that tract of land marked on said map introduced by plaintiff as "Addition to San Jose," containing 4,430.64 acres.) The granting part of said patent is identically the same as that first set out, except that it grants the "Addition to San Jose," and is signed and issued by the President and recorder of the General Land Office on the 4th of December, 1875. Said patent was recorded February 5, 1877, in the recorder's office of Los Angeles county, at the request of Louis Wolfskill.

Plaintiff read in evidence deed from Ricardo Vejar to H.
82 Tischler and J. Schlessinger, of date the 30th day of April, 1864, for $28,000 cash, in form "grant, bargain, and sale," conveys "all that certain rancho tract and parcel of land, lying and being in the county of Los Angeles, known as the Rancho San Jose; for a more full, particular, and accurate description reference being had to the grant of the same by the Mexican government, the confirmation thereof by the U. S. land commission and the U. S. district court, and the survey of the same by the Government of the U. S., containing two leagues, more or less, together with the appurtenances thereto belonging, the same including the house where Francisco Vejar resides, and all houses and improvements belonging to the Rancho San Jose, together with the fences, which are to be left by said first party in their present condition. And said party of the first part covenants that said ranch is free from all liens or incumbrances suffered or done by the first party, and will warrant the title to the same from his own acts." Said deed was acknowledged and recorded in Los Angeles county recorder's office on the 30th of April, 1864.

Plaintiff read in evidence deed from said Fischler and Schlesinger to Louis Phillips, in form of remise, release, and quit claim, dated, duly acknowledged, and recorded in the records of the recorder's office, Los Angeles county, on the 6th of April, 1866. The
83 description in said deed is the same as in the deed next above described, and concludes as follows: "Together with the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and also all the estate, right, title, and interest actions, homestead property, possession, claim, and demand whatsoever, as well in law as in equity, in or to the above-described premises, and every part and parcel thereof unto the said party of the second part, his heirs and assigns, forever."

Plaintiff read in evidence deed from Henry Dalton to Louis Wolfskill, of date 7th January, 1877, in form of grant, purporting to convey "all the right, title, and interest of the said Dalton in and to all those three ranchos in the county of Los Angeles, and known, first, [as] the Azusa rancho; second, the Rancho San Jose Addition; third, the Rancho San Jose."

Plaintiff read in evidence the following documents:

Deed from Lewis Wolfskill, Henry Dalton, and Guadalupe Z. de Dalton to James B. Seawell, David H. Seawell, Thomas W. Hudson,

James N. Wily, Thomas H. Rickman, George W. Park, William A. Spurlock, and George W. Morgan, dated 25th of September, 1878, in form of grant purporting to convey—first, the Azusa; second, the Rancho San Jose—reference being made for description to
84 the patent of said rancho as recorded in Los Angeles county records; third, the Rancho Addition to San Jose—reference being made to the patent of said rancho. Then follows the following clause:

"It being understood that this conveyance includes no lands outside the boundaries of said ranchos, or either of them," as described in said patent. Said deed was duly recorded October 1st, 1878.

Admitted, that all the right, title, and interest of Ygnacio Palomares was vested in the defendant, Lugarda A. de Palomares. At the beginning of this suit said interest was vested in Trinidad Yorba.

Plaintiff read in evidence the following documents:

Mortgage executed by Henry Dalton and Lewis Wolfskill to Los Angeles County Bank on the 7th of August, 1877, purporting to convey the Azusa rancho, the San Jose rancho, and the San Jose Addition.

Also mortgage by Henry Dalton to said bank, purporting to convey the homestead: "The undivided one-half of the San Jose Addition, the whole containing one square league, and the interest of Dalton therein, being one-half league; also an undivided part of the San Jose rancho, amounting to about 1,600 acres, being his
85 entire interest in said rancho, and all his interest in the Ranchos Azusa, San Jose, and San Jose Addition; said mortgage of date October 1st, 1874, and duly recorded on that date in the records of Los Angeles county."

Plaintiff then read in evidence a certified copy of the decree of the United States district court in case of Ricardo Vejar *vs.* The United States, which decree is substantially and correctly set out in the patent first above described.

Plaintiffs read in evidence document in substance as follows:

James B. Seawell, David H. Seawell, J. N. Wiley, George W. Park, T. W. Hudson, David R. Seawell, I. N. Teague, Thomas H. Richman, C. Teague, and B. S. Woods, James H. Clarke, Geo. W. Morgan, Lewis Wolfskill, [and] W. H. Spurlock hereby grant to the Mound City Land and Water Association the following-described property in Los Angeles county:

First. The Rancho Azusa, reference being made to the patent.

Second. All our right, title, and interest in the Ranchos "San Jose" and "Addition to San Jose," reference being made to the patents of said ranchos as recorded in the county recorder's office.

Recorded Oct. 3, 1878.

86 Also decrees in said court in the case of Henry Dalton against the United States and in case of Ygnacio Palomares, which are correctly set out in said patent above.

Plaintiff then read in evidence the articles of incorporation of both plaintiffs, together with certificates in each corporation issued by the secretary of state. The original articles of incorporation were duly filed in the office of the county clerk of Los Angeles county.

Plaintiff then produced in evidence the following map, offered in evidence for the purpose of showing the relative boundary of the claims as presented to the United Sates land commissioners and as confirmed and patented from the United States district court.

86½ Plaintiff read in evidence the following documents:

CALIFORNIA LAND CLAIMS,
ATTORNEY GENERAL'S OFFICE, *29th September*, 1856.

SIR: In the case of the claim of Ygnacio Palomares, confirmed to the plaintiff by the commissioners, case No. three hundred and sixty-five (365), and also confirmed on appeal by the district court, appeal in the Supreme Court will not be prosecuted by the United States.

I am, respectfully, C. CUSHING.

Pacifias Ord, Esq., U. S. attorney, Los Angeles.

87 *Transcript from the Board of Land Commissioners, No. —.*

In the District Court of the United States within and for the Southern District of California, December Term, 1856.

Hon. Isaac S. R. Ogier, judge.

THE UNITED STATES, Appellant,
adv.
YGNACIO PALOMARES, Appellee. } Docket No. 122.

In pursuance of a letter from the Attorney General of the United States hereunto annexed, giving notice that in the above cause the appeal in the Supreme Court will not be prosecuted by the United States, it is hereby stipulated and agreed by and between the parties that the order granting an appeal to the Supreme Court heretofore made in this cause be vacated, and that the decree of the court heretofore rendered in this cause may, by order of the court, be made final.

P. ORD,
District Attorney.
MYRON NORTON,
Attorney for Appellee.

Endorsed: Filed 23d February, 1857. C. Lewis, clerk.

88 *Transcript from the Board of Land Commissioners, No. —.*

In the District Court of the United States within and for the Southern District of California. December Term, 1856.

Hon. Isaac S. R. Ogier, judge.

THE UNITED STATES, Appellant,
vs.
YGNACIO PALOMARES, Appellee. } Docket No. 122.

FEBRUARY 23D, 1857.

The Attorney General of the United States having given notice

that the appeal to the Supreme Court from the decision of this court in the above-entitled cause will not be prosecuted by the United States, and a stipulation having been entered into by the United States district attorney for the claimant that the order granting an appeal to the Supreme Court heretofore made in this cause be vacated, and that the decree of this court heretofore rendered in this cause may, by the order of the court, be made final, it is ordered, adjudged, and decreed that the order granting an appeal to the Supreme Court, heretofore made in this cause, be, and the same is hereby, vacated, and that the claimant have leave to proceed
89 under the decree of this court, heretofore rendered in this cause, as under a final decree.

ISAAC S. R. OGIER,
U. S. District Judge.

Plaintiff read in evidence similar letters, stipulations, and decrees in the cases before the land commissioners of Henry Dalton and Ricardo Vejar, respectively.

Plaintiff rested his case, and defendant read in evidence the following documents:

The citizen Juan Bantista Alvarado, Governor *pro tem.* of the State, and president of the hon. assembly of the same:

Whereas the citizens Ignacio Palomares and Ricardo Vejar, Mexicans by birth, have solicited for their personal benefit and that of their families the tract of land known by the name of San Jose, within the boundaries of the sketch which accompanied their petition, having previously taken the proper steps as prescribed by the laws and regulations on the subject, by virtue of the faculties vested upon me, in the name of the Mexican nation, I have decided to grant to them the said tract of land, declaring them proprietors of the same by these presents, said grant being understood with full conformity to the laws, and subject to the approval or rejection by the hon. assembly, and under the following conditions:

90 1st. Neither the grantees nor their heirs shall divide or sell that which is adjudicated to them, nor impose upon it any tax, entail, bond, mortgage, nor any other incumbrance, even if it be for a pious object, nor shall it be transferred to mortmain.

2d. They may fence it without prejudice to the cross-roads, roads, and servitudes; they may enjoy it freely and exclusively, devoting it to the cultivation and uses they may deem fit.

3d. When the property is confirmed to them they shall solicit from the proper judge that he give them juridical possession by virtue of this dispatch, by whom the boundaries shall be fixed and bounds set.

4th. The land of which donation is made is purely the one expressed in the petition of the parties interested, and is set forth in the sketch which is joined in this expediente, and the judge who shall give the possession shall give notice to this Government of the number of ranges (sitios) it includes.

Therefore I order that the present instrument, serving them as a

title, and it being held as good and valid, it be noted down in the corresponding book, and that it be delivered to the parties interested for their security and other proper ends.

91 Given at the ex-mission of Santa Barbara the 15th of April, 1837.

Santa Barbara, April 19th, 1837.

(Signed) JUAN B. ALVARADO. (Rubric.)

VICTOR PRUEON,
Secretary pro tem. (Rubric.)

In session of this date the hon. assembly approved the proposition of the report of the commission on unoccupied lands, which is as follows, to the letter:

There is granted to the citizens Ignacio Palomares and Ricardo Vejar the spot named San Jose, by reason of having the necessary requirements according to the law of August 18th, 1824, and article 5th of the regulation of November 21st, 1828.

JOSE ANTO DE LA GUERRA Y CARRILLO.

ANTONINO BUELNA. (Rubric.)
ALVARADO,
President. (Rubric.)
VICTOR PRUDON,
Secretary. (Rubric.)

The party interested must replace the paper with the proper seal, adding to this dispatch a marked sheet of the value of six dollars.

(Signed) ALVARADO. (Rubric.)

Endorsed: No. 304. Henry Dalton. Azusa Exhibit M. orginal grant to Ricardo Vejar and Ygnacio Palomares, attached to
92 the deposition of Ygnacio Del Valle. Filed in office October 23d, 1852. Geo. Fisher, secretary. Recorded in Book of Records of Co., vol. 9, pp. 388 and 389.

"The foregoing is duly certified to be a correct copy of the original, together with the endorsements thereon, filed in case No. 364 on the docket of the aforesaid board of commissioners. Henry Dalton, Azusa Exhibit M."

By THEO. WAGNER,
U. S. Sur. Gen. Cala.

In the city of Los Angeles, in Upper California, on the second day of the month of August, A. D. one thousand eight hundred and thirty-seven, condescending to the petition of Messrs. Don Ignacio Palomares and Don. Ricardo Vejar, in order that they may be given the proper possession of the range (sitio) and ranch called San Jose, granted by the government of this Territory, and having agreed with the surveyor, Don Carlo Barie, for the purpose that he resurvey the said land with absolute regard to the first survey that has been made, a sketch of which the parties interested joined to the

expediente, let us proceed, I and my assistant witnesses, to give the said possession, conforming to the title or dispatch conferred upon them by the political chief under date of the fifteenth of April ultimo. Citizen Jose Sepulveda, 2nd constitutional alcalde of
93 this said city, so decreed, ordered, and signed with my assistant witnesses on this common paper, there being none of the proper seal. I attest.

(Signed) JOSE SEPULVEDA.
Asst., NARCISO BOTELLS.
Asst., PABLO VEJAR.

On the same day, month, and year, being at the ex-mission of San Gabriel, I, the undersigned judge, sent a communication to the administration of said mission, the citizen Jose Perez, informing him of the object for which I was going to the spot San Jose, as this belonged to that community, since I was going to resurvey it and place Messrs. Don Ignacio Palomares and Don Ricardo Vejar in possession of it. Not having stated any exceptions in order to stop the survey, I told him that I was going to proceed to the same, which I wrote down by document, which I authorize and sign with my assistant witnesses, according to right. I attest.

(Signed) JOSE SEPULVEDA.
Asst., NARCISO BOTELLS AND
PABLO VEJAR.

At the rancho of St. Jose, on the third of August, A. D. one thousand eight hundred and thirty-seven, I being the proper judge for the practice of these transactions, I appointed two chainmen, whose names were omitted for reason of their not being able to sign, whom I informed of their appointment, which they accepted under
94 the oath they took, promising to faithfully discharge their duties, which I authorize and sign with my assistant witnesses according to right.

(Signed) JOSE SEPULVEDA.
Asst., NARCISO BOTELLS.
Asst., PABLO VEJAR.

On the same day, month, and year, being on the spot at the point of the hills called *of* Sta Ana, in order to effect the resurvey and possession which corresponds to the Messrs. Don Ygnacio Palamares and Don Ricardo Vejar of the range (sitio) named San Jose, having previously observed the requirements of the law, and having with me the assistant witnesses, the chainmen and the surveyor, Don Carlos Barie, I made them measure a rope which contained one hundred varas, which was examined and tested by the said surveyor, and fixed at the ends two blocks of wood. After observation and calculation by said surveyor and by his direction the rope was placed at the foot of a curly willow (sauz chino), which was taken as a bound, placing among its branches a dry stick in the form of a cross, direction from east to west; there we measured and counted nine thousand seven hundred varas to the foot of the hills called by — La Puenta,

designated as bound a large walnut tree which is on the slope of the small hill which is on the edge of the road which goes from the said ranchos of San Jose to that by La Puenta, making a cut
95 in one of its arms with a machete (sword). Afterwards running the rope in the direction south to north, there were measured and counted ten thousand four hundred varas which ended at the rivulet of San Jose in front of a high peak, where there was designated as bound a large oak tree, where we stuck a cow skull and made some cuts on one of its arms.

Afterwards the rope was run in direction west to east, and there was measured and counted ten thousand six hundred varas, which ended at the rivulet of San Antonio, taking as bound two young sycamore trees which grew together, in the bark of which there were engraved two crosses. From thence the rope was run in the direction north to south, and there we measured and counted nine thousand seven hundred varas, which ended at the foot of the same curly willow where the resurvey was commenced, and which marks a corner in direction east to west; with which was ended the survey of this range (sitio) to the satisfaction of the parties interested, to whom I gave orders to place the corresponding monuments at the points where they correspond, and they so understood, having marked those as a sign of possession, which I set down, authorize, and sign, together with the surveyor and assistant witnesses, according to right.

(Signed) JOSE SEPULVEDA.
CARLOS BARIE.

Asst., NARCISO BOTELLS.
Asst., PABLO VEJAR.

96 Los Angeles, August the fourteenth, A. D. one thousand eight hundred and thirty-seven.—Let a certificate of these present transactions be given to the parties on common paper by reason of there being none of the proper seal. Jose Sepulveda, 2d constitutional alcalde of this city and its jurisdiction, so decreed, ordered, and signed in presence of the assistant witnesses according to right.

(Signed) JOSE SEPULVEDA.
Asst., NARCISO BOTELLS.
Asst., PABLO VEJAR.

It tallies with the original transactions mentioned and which exist in the archives of public documents, where they are recorded and set down from pp. 9 to 12. It is faithfully copied, corrected, and written on these three leaves of common paper by reason of there being none with the corresponding seal, which I authorize and sign with my assistant witnesses in the city of Los Angeles, on the sixteenth day of November, A. D. one thousand eight hundred and forty-seven. In witness of truth.

(Signed) JOSE SEPULVEDA, *Asst.* (Rubric.)
Asst., NARCISO BOTELLO.
Asst., PABLO VEJAR. (Rubric.)

Endorsed: No. 364. Henry Dalton, Azusa. Exhibit N. Act of juridical possession of San Jose attached to the deposition of Ignacio del Valle.

97 Filed in office October 23d, 1852. Geo. Fisher, secretary. Recorded in book of records of ev., vol. IX, pp. 389, 390, and 391.

Expediente caused to be made by citizens Ignacio Palomares, Ricardo Bejar, and Luis Arenas in application for the spot named San Jose, 1837. No. 141.

To his excellency the Governor:

Citizen Ignacio Palomares and Citizen Ricardo Vejar before your excellency, as may be more proper and right, appear and say that, having a considerable number of stock in cattle and horses of our own, the only means for the support of our families, which stock at present are in a very limited range and temporarily where we only suffer drawbacks, and there being unoccupied a tract known by the name of San Jose, which is distant about six leagues, a little more or less, from the Mission of San Gabriel, the sketch of which we will communicate to your excellency as soon as possible, we humbly beg your excellency to grant us the spot referred to, kindly taking into consideration the reduced range where we are, for which reason we trust ourselves to your well-proved goodness, *for* which we will esteem as a favor and justice, taking oath as may be neces-

98 sary, &c., admitting this on common paper, there being none with the required seal between lines el-valid.

City of Los Angeles, March 24th, 1837.

For myself and for Ricardo Vejar, who does not know how to write.

(Signed) IGNO PALOMARES. (Rubric.)

(At margin of above application the following is written:)

CITY OF LOS ANGELES, *March 30th;* 1837.

Let the ayuntamiento of the city of Los Angeles report whether the parties interested in this application have all the legal requirements to be considered in their petition, whether the land they ask for is unoccupied, whether it does not belong to the private property of some individual, town (pueblo), or mission, or whether, if belonging to some of the latter, it is in a condition to be granted in accordance with the laws of colonization; these formalities having been attended to, the expediente shall be returned to the Government for its decision.

(Signed) ALVARADO. (Rubric.)

LOS ANGELES, *April 1st*, 1837.

This application having been communicated to the illustrious ayuntamiento of this city at their session of this date, together with the decree of his excellency the Governor *pro tem.* of the State,

it was resolved to refer it to the committee on unoccupied lands in order that it make the report called for.

(Signed) GIL IBARRA, (Rubric.)
President.

NARCISO BOTELLO, (Rubric.)
Secretary.

Illustrious Ayuntamiento: The commission on unoccupied lands says that, in accordance with the above decree of his excellency the Governor *pro tem.* of the State,— reports that the parties interested in this expediente are Mexican citizens by birth, have rendered repeated services to this jurisdiction, and have a considerable number of stock, both cattle and horses, which are amply sufficient to cover the range they ask for in accordance with the law on the subject, which stock they keep at present temporarily on a very small range, which was granted to them, together with other residents of this city, and which is quite scarce in water and pasture.

The spot San Jose mentioned in this expediente is at present unoccupied, because, although it has belonged to the ex-mission of San Gabriel, the commission is thoroughly informed and positively knows that there is not on it a single head of cattle of said community, for which reason the commission believes that it is in a condition to be granted in accordance with the laws of colonization.

City of Los Angeles, April 7th, 1837.

(Signed) BRANLIO VALDEZ. (Rubric.)
FELIPE LUGO. (Rubric.)
FRANCISCO PANTAJA. (Rubric.)

LOS ANGELES, *April 8th.*

The preceding report being approved by the illustrious ayuntamiento, let it be remitted to his excellency the Governor of the State, the present expediente, that in view of it he may act as may be convenient.

(Signed) GIL IBARRA. (Rubric.)
VICENTE DE LA OSA, (Rubric.)
Secr. pro tem.

SANTA BARBARA, *April 15th*, 1837.

Having seen the petition at the beginning of this expediente, the report of the illustrious ayuntamiento of the city of Los Angeles, together with all else that was taken into consideration and was proper to see, in conformity with the laws and regulations in the matter, the citizens Ignacio Palomares and Ricardo Vejar are declared owners in proprietorship of the spot named San Jose, according to the sketch they joined to the application, and within the boundaries that are therein expressed, let the corresponding certificate be issued, note it down in the proper book, and address this expediente to the hon. assembly for its approval. The Hon. Don Juan B. Alvarado, Governor *pro tem.* of the State and president of the hon. assembly, so decreed, ordered, and signed, which I attest.

(Signed) JUAN B. ALVARADO. (Rubric.)

SIR: The commission on unoccupied lands having taken cognizance of the expediente made by citizens Ygnacio Palomares and Ricardo Vejar, soliciting the spot named San Jose, submits to the decision of your excellency the following proposition:

The spot named San Jose is granted to citizens Ygnacio Palomares and Ricardo Bejar that they may possess it in ownership, having the necessary requirements in conformity with the law of August 18th, 1824, and art. 5th of the regulation of November 21st, 1828.

Santa Barbara, April 16th, 1837.

(Signed) JOSE A. DE LA GUERRA Y CARRILLO. (Rubric.)
ANTONIO BUELNA. (Rubric.)

SANTA BARBARA, *April 19th*, 1837.

In session of this date the corporation approved the proposition with which ends the foregoing report, ordering the expediente to be returned to the Governor for the proper ends.

(Signed) ALVARADO. (Rubric.)
VICTOR GRADON, *Secr.* (Rubric.)

102 MONTEREY, *March 14th*, 1840.

Whereas the citizens Ignacio Palamares, Ricardo Vejar, and Luis Arenas have mutually agreed and solicited for the benefit of all three the spot named San Jose, which was granted to the two first named by decree of April 15th, 1837, with addition of one range for black cattle on the west side contiguous to the San Gabriel mountains, having previously made the inquiries that are proper, according to what is prescribed by laws and regulations on the subject, and by virtue of the faculties conferred upon me by the Mexican nation I hereby declare them owners in proprietorship of the spot named San Jose, with the addition of one range (sitio) for black cattle. The Hon. Don Juan B. Alvarado, Constitutional Governor of the Californias. So ordered, decreed, and signed, which I attest.

To the prefect *pro tem.* of this district:

Luis Arenas, a native of Hermosillo, in the department of Sonora, and a resident of this city, before your honor, with due respect and according to right, says that the present Hon. Governor, Don Juan Bautista Alvarado, granted to him since last year the right to one-third of the piece of land known by the name of San Jose, he remaining by this fact associated with the citizens Ignacio Palamares and Ricardo Vejar, his excellency granting, for the benefit of all three, one league more of land in addition to that now pos-
103 sessed by Palamares and Bejar. In order to be admitted as an associate with these two gentlemen the undersigned was recommended by his excellency the Governor himself, by means of letters addressed to Palamares on that date.

Several circumstances have prevented the undersigned from formally appearing at the proper time as he does now, entreating your honor to grant him the said league of land, and for the portion called el susco, in the direction of the Mission of San Gabriel, the sketch of which I will present to your honor as soon as possible.

Therefore I entreat your honor to accede to my petition decreeing in conforming with it, by which I will receive a favor and justice, kindly admitting this on common paper, there being none with the proper seal.

Los Angeles, December 16th, 1839.

(Signed) LUIS ARENAS. (Rubric.)

(At margin of above document the following is written:)

LOS ANGELES, *December 20th*, 1839.

Let the present application be sent to citizens Ygnacio Palomares and Ricardo Vejar in order that they may report on its contents, and afterwards let it be sent to the administrator of the Mis-
104 sion of San Gabriel in order that he may state what may be convenient on his part, with the understanding that the interested party shall join the proper sketch, and let it be returned for action.

(Signed) TAPIA. (Rubric.)

NARCISO BOTELLO, *Sec'r.* (Rubric.)

To the prefect of this district:

The undersigned, Ignacio Palomares and Ricardo Bejar, in obedience to the preceding superior marginal decree, and in so far as it regards them, they say that they have both unanimously agreed to admit the party interested in the present expediente, citizen Luis Arenas, as an associate in the Rancho San Jose, which they now possess, on account of his having been recommended by His Excellency Governor Don Juan Bantista Alvarado, in a letter written to the former of us, offering for that consideration to grant one league more of land in addition of the range, in the direction which is called Susa, towards the Mission of San Gabriel, it being the portion better suited for such an extension.

Los Angeles, December 21st, 1839.

(Signed) IGNACIO PALOMARES. (Rubric.)
RICARDO BEJAR. (X Rubric.)

SAN GABRIEL, *January 20th*, 1840.

The present expediente having been received yesterday at this administration, to-day we beg to report, as ordered from the office
105 of the prefect of this district, that the spot sought as an extension has belonged and belongs to San Gabriel.

(Signed) JUAN BANDINI. (Rubric.)

To His Excellency the Governor:

The prefecture of this 2nd district having knowledge of the application at the beginning of this expediente and foregoing information, believes that the petition of the interested party should be granted if such is the superior pleasure of your excellency, because, although the administrator of the Mission of San Gabriel, Don Juan Bandini, states that said land asked for belongs to that establishment, it is in the same condition as the rest, which, at longer dis-

tances, they claim as belonging to it, because up to the present time they have not got it occupied, and is distant from the mission about five or six leagues.

(Signed) TIBURCIO TAPIA. (Rubric.)
NARCISO BOTELLO, *Secr.* (Rubric.)

MONTEREY, *March 11th*, 1840.

Having seen the petition with which this expediente commences, the report of the hon. prefect of the 2d district, with everything else that was taken into consideration and was proper to consider, in conformity with the laws and regulations on the subject, it is declared
106 that the citizens Ignacio Palomares, Ricardo Vejar, and Luis Arenas are owners in proprietorship of one range (sitio) for black cattle in addition to the one called San Jose, which was granted to the two first named, let the title to the said spot be newly issued with the mentioned extension in favor of the three individuals named; let this expediente be added to the one made by Palomares and Vejar for the proper recording of it, and let it be reported to the hon. departmental assembly for its approval as regards the increase referred to, taking the proper note of it.

Thus I, J. B. A., constitutional governor of the department of the Californias, ordered and signed.

[Seal Third—Two Reals.]

(Signed) ALVARADO. (Rubric.)

Temporarily issued by the maritino custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

ANTONIO MARIA OSIO. (Rubric.)

XIMENO. (Rubric.)

To the prefect of the district:

[Seal Maritim Custom of Monterey.]

The citizen Louis Arenas, a resident of the city of Los Angeles, before your honor in the most proper form *as* appears, and say- that there being to the west of the range I possess a piece of unoc-
107 cupied land and without any spring of water, composed of the greater part of brushy ground, as said land forms a small strip, it being the boundary with the San Gabriel river and the road of San Jose, and its extent is probably less than one league, *which* I ask that it be added to the range (sitio) I possess, in order that my stock may without any interruption extend, as the land I possess is somewhat scarce in pasture, for which reason I trust your honor will deign to report upon this subject what you may deem proper, and send this to his excellency the Governor, in order that his excellency, with his well-proved justification, may deign, should such be his pleasure, to grant me what I ask for. I therefore earnestly ask your honor to accede to my petition, in which I shall receive favor. I take the necessary oath.

Los Angeles, August 17th, 1841.

(Signed) LUIS ARENAS. (Rubric.)

(At margin of above document the following is written:)

LOS ANGELES, *August 18th*, 1841.

In conformity with the laws on the subject, let the 2d justice of the peace report whether the land solicited by the interested party belongs to any community, corporation, or individual, and whether it is unoccupied, together with everything else he may deem convenient to illustrate the matter, and, adding to it the proper
108 sketch, let it be sent to the father minister of the mission of San Gabriel, in order that he may produce his, as far as that community is concerned, and return it for the proper action.

(Signed) ARGUELLO. (Rubric.)

NARCISO BOTELLO, *Secr.* (Rubric.)

In fulfillment of the superior decree on the margin about a certain application, I went personally to examine the land asked for by the party interested, which land, although it belongs to the mission of San Gabriel, is unoccupied, and in its greatest part full of brush; for which reason, if it be the pleasure of your excellency, it may be granted to him.

[Seal Third—Two Reals.]

(Signed) IGNACIO MU ALVARADO. (Rubric.)

Temporarily issued by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

ANTONIUS MARIA OSIS. (Rubric.)

XIMEUS. (Rubric.)

SAN GABRIEL, *Sep. 7th*, 1841.

[Seal Maritim Custom-house of Monterey.]

The arrival of the illustrious bishop of California being so near at hand, and not knowing what shape things will take with
109 his presence, nor what his excellency, in accord with the supreme government of this department, may do about the mission lands already granted, I cannot report anything as regards the one asked for by the interested party, as it belongs to the mission.

(Signed) FR. THOMAS ESTENAGA. (Rubric.)

MOST EXCELLENT SIR: The present application for an extension of the land occupied by Don Luis Arenas, it is completely unoccupied, most of it being brushy and without any spring of water, notwithstanding the report of the Rev. Father Minister that with the coming of his excellency the bishop even the lands (sit-os) granted by the Government must be used up, it is the opinion of this prefecture, if it be the pleasure of your excellency, that it be granted to him, as I am informed that he merely solicits it in order to square off his land of his range, because it does not offer any advantage

whatever for anything else. Notwithstanding the above your excellency will please decide what may be its superior pleasure.

Los Angeles, October 17th, 1841.

(Signed) S. ARGUELLO. (Rubric.)
NARCISO BOTELLO, (Rubric.)
Secretary.

MONTEREY, *November 8th*, 1841.

Having seen the petition which begins this exepiente to
110 the report of the prefect of the second district and that of the second justice of the city of Los Angeles, together with everything else that was taken into consideration and was proper to see, in conformity with the laws and regulations on the subject, Don Luis Arenas is hereby declared the owner of one range (sitio) for black cattle, in addition to the land granted to him on the 14th of March of last year, the boundaries of which shall be recognized to be the river of Azusa, the road of San José and land of the same name, let the corresponding certificate issue, add this expediente to the one made by citizens Ignacio Palomares and Ricardo Vejar, take notice of it in the proper book, and address this expediente to the hon. departmental assembly for its approval. Don Manuel Jimeno Casarin, first member in ownership of said hon. departmental assembly, in exercise of the government of the same, so ordered, decreed, and signed, which I attest.

(Signed) JIMENO. (Rubric.)

JOSE Z. FERNANDEZ,
Secr. pro tem. (Rubric.)

Attached to the foregoing expediente was a diseño, which accompanied the first petition of 1837, copy of which follows this, and is marked diseño one; also diseño which accompanied the petition of 1840, copy of which follows, and is marked diseño two.

111 Expediente of one league of land which was added to the Rancho San Jose Palomares. Year 1840.

[Seal First—Six Dollars.]

Temporarily issued by the maritim custom house of Monterey for the years 1839 and 1840.

ALVARADO. (Rubric.)

ANTONIO MA. OSIO. (Rubric.)

Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas the citizens Ignacio Palomares, Ricardo Bejar, and Luis Arenas have mutually agreed and solicited for the benefit of the three the spot named San Jose, which was adjudicated to the two first named by decree of April 15th, 1837, with the increase of one range for black cattle on the western side contiguous to the Sierra of San Grbriel, having previously taken the necessary steps and made the proper inquiries as prescribed by the laws and regulations on

the subject, by virtue of the faculties upon me conferred, in the name of the Mexican nation I declare them owners in proprietorship of the said spot, subject to the approval of the hon. departmental assembly, and to the following conditions:

1st. They may fence it without prejudice to the cross-roads,
112 roads, and servitudes; they shall enjoy it freely and exclusively, distraining it to the use or cultivation that may best suit them, but within one year they shall build house upon it, and it shall be inhabited.

2d. The land of which donation is made to them is the one named San Jose, granted by decree of April 15th, 1837, and one range for black cattle in addition, as shown by the sketches joined to the corresponding expediente. The judge giving the possession shall cause it to be surveyed according to the ordinance, leaving the surplus that may result to the nation for the proper uses.

3d. When the property is confirmed to them they shall solicit from the respective judge that he shall give them juridical possession by virtue of this dispatch, by whom shall be set forth the boundaries, in which limits shall be placed besides the monuments, some fruit trees or forest trees of some usefulness.

4th. Should they fail to observe these conditions they shall forfeit their rights to the land and it shall be open to be claimed by another.

Therefore I order that, this serving them as a title, and holding it as firm and valid, it be noted down in the proper book, and that it be delivered to the parties interested for their security and other ends.

Given in Monterey on the fourteenth of March, one thousand eight hundred and forty.

JUAN B. ALVARADO. (Rubric.)

MANUEL TIEMO, *Secr.* (Rubric.)

113 This dispatch has been noted down in the book of entries on adjudications of unoccupied lands at $2.

TIMENO. (Rubric.)

His excellency the Governor orders that this title be noted down at the prefecture of the second district.

TIMENO. (Rubric.)

LOS ANGELES, *April 2d*, 1840.

Under this date this dispatch has been noted down in the proper book kept in this prefecture on page 2nd and next, by virtue of which the parties interested shall apply to one of the judges of this city soliciting the proper possession of the range (sitio) referred to.

TIBURCIO TAPIA. (Rubric.)

NARCISO BOTELLO, *Secr.* (Rubric.)

Seal third. Two reals issued by the administration of the maritim custom-house of the port of Monterey, in Upper California, for

the years one thousand eight hundred and thirty-six and one thousand eight hundred and thirty-seven.

GUTIERUZ,
ANGEL RAMIREZ.

114 Good for the years 1839 and 1840.

ALVARADO. (Rubric.)
ANTONIO MA OSIO. (Rubric.)

To the hon. the first justice of the peace:

Ignacio Palomares, Ricardo Vejar, and Luis Arenas, before your honor in the best form and in the proper manner, say that in the title which we respectfully enclose there exists a decree of the prefecture, dated yesterday, by which we are directed to apply to one of the justices of the peace of the city, in order that we be given the corresponding possession, which you will please give us in accordance with the formulas of the title. Therefore we beg your honor to comply with our request, it being just, and we take oath, &c.

Los Angeles, April 3d, 1840.

IGNACIO PALOMARES. (Rubric.)
LUIS ARENAS. (Rubric.)

Los Angeles, *April 3rd*, 1840.

Presented and allowed as necessary in right; proceed to give the possession requested by the parties interested. Thus I, the undersigned justice, decreed, ordered, and signed with my assistant witnesses according to right.

FELIPE LUGO. (Rubric.)

115 In the city of Los Angeles, of the department of the Californias, on the seventh day of the month of May, one thousand eight hundred and forty, condescending to the request of the citizens Ignacio Palomares, Ricardo Vejar, and Luis Arenas, in order that they be given the corresponding possession in the increase of one league more of land to the rancho named San Jose, on the western side, granted by the government of the department, the title to which they accompany to their said request, I ordered that I proceed by myself, the judge undersigned, and assistant witnesses, to the said spot, and proceed to give the said possession, having previously cited the coboundaries conforming to the said title, or dispatch which has been conferred upon them by his excellency the Governor, withdated March the fourteenth, one thousand eight hundred and forty. The citizen Felipe Lugo, 1st justice of the peace of the 1st instance of this city, so decreed, ordered, and signed in presence [of] my assistant witnesses, with whom I act by power on this common paper, there being none of the proper seal.

I attest: FELIPE LUGO.

Asst's, IGNACIO CORONEL.
JANNARIO AVILA.

On this date I, the present judge, summoned the Rev. Father of the Mission of San Gabriel and Don Jose de la Luz Linares,
116 by the reason of their being coboundaries, whom I informed of the object I had in view, and they not having made any objection, I told them I was going to proceed to the measurement, which I put down, authorize, and sign with my assistant witnesses according to right.

FELIPE LUGO.
IGNACIO CORONEL.
JANNARIO AVILA.

At the Rancho of San Jose on the seventh day of the month of May, one thousand eight hundred and forty, I, the proper judge for the practice of these acts, appointed two chainmen, whose names were omitted by reason of not knowing how to sign, whom I informed of their appointment, which they accepted, under oath promising to faithfully discharge their duty, which I authorized and signed with my ass't witnesses according to right.

FELIPE LUGO.

IGNACIO CORONEL, *Ass't.*
JANNARIO AVILA, *Ass't.*

On the same day, month, and year, being at the old boundary of the Rancho of San Jose, at the foot of an oak tree, which was before taken as bound and at sufficient distance from the house, in order to effect the resurvey and corresponding possession in favor of the citizens Ignacio Palomares, Ricardo Vejar, and Luis Arenas
117 of the one league more of land which is marked Azusa, having previously complied with all the requirements of the law, and being in presence of my assistant witnesses and chainmen, I caused a rope to be measured which contained one hundred varas and made two blocks of wood, and after observation and calculation by my order the rope was run from the oak tree in the direction east to west, and there were measured and counted five thousand varas which ended at the point of a small hill which was marked by a monument, at which place appeared the steward of the Mission of San Gabriel, Mr. Antonio Balensuela, sent by the father, this direction being coboundary with the Puente; from there running the rope in the direction south to north there were measured and counted five thousand varas, which ended at the foot of a small red hill which was named the hill of San Felipe, which was marked by a monument; from there the rope was run from east to west and there measured and counted five thousand varas, ending at the old boundary of the Rancho San Jose and where had appeared Mr. Jose de la Luz Linares, with which the measurement was ended and the parties interested remained in full possession, which I authorized and signed with my ass't witnesses according to right.

FELIPE LUGO.

Ass'ts, IGNACIO CORONEL.
JANO. AVILA.

118 LOS ANGELES, *May 8th*, 1840.

Let a certificate be issued to the parties of the transactions which are already furnished on this common paper, there being none of the corresponding seal. Felipe Lugo, 1st justice of the peace, and of the 1st instance, so decreed, ordered, and signed, with my assistant witnesses, according to right.

FELIPE LUGO.

IGNACIO CORONELL.
JANO. AVILA.

NOTE.—To-day, eighteenth of May, one thousand eight hundred and forty, this instrument was placed on record and certificates given to the parties interested, and, as a witness, I put my rubric. (Rubric.)

It tallies with the original, to which I refer, which is faithfully copied, corrected, and compared from the book of public instruments of the year one thousand eight hundred and forty, and is written on five leaves.

In witness of truth—

FELIPE LUGO. (Rubric.)

119 *Grant of Azusa.*

[Seal First—Six Dollars.]

Temporarily issued by the maritim custom-house of Monterey for the years 1839 and 1840.

ALVARADO. (Rubric.)
ANTONIO MA. OSIO. (Rubric.)

Good for the years 1841 and 1842.

ANTONIO MARIA OSIO. (Rubric.)

[SEAL.] JIMENO. (Rubric.)

Manuel Jimeno Casarin, first member in ownership of the honorable departmental assembly, in charge of the government of the same:

Whereas the citizen Luis Arenas has asked as an increase to the range he occupies one range for black cattle, to the west, in brushy land, bounded by the mountains, the San Jose road, the Azusa river and boundary of citizen Duarte, having previously taken the steps and made the inquiries in regard to it, as prescribed by laws and regulations, by virtue of the faculties vested upon me, in the name of the Mexican nation I have deemed fit to grant him the said increase, declaring it to be his property by these presents, sub-
120 ject to the approval of the honorable departmental assembly, and to the following conditions:

First. He may fence it in without interfering with the cross-roads, roads, or private roads; he shall enjoy it freely and exclusively, putting it to the use or cultivation that may suit him better.

Second. He shall petition the proper judge to give him judicial possession by virtue of this dispatch, by whom shall be fixed the

bounds within which limits he shall set some fruit trees or forest trees of some varieties, besides the corner or boundary monuments.

Third. The land of which a grant is made is one range for black cattle, as explained by the sketch which is joined to the respective expediente. The judge who gives the possession shall cause it to be measured in conformity with the ordinance, the surplus that may result remaining for the nation for proper uses.

Fourth. If he should fail to observe these conditions he shall lose his right to the land, and it may be claimed by another.

Therefore I order that this title being taken for good and valid that it be noted down in the respective book-, and it shall be delivered to the interested party for his security and other ends.

121 Given at Monterey the eighth day of November, one thousand eight hundred and forty-one.

(Signed) MANUEL JIMENO. (Rubric.)

JOSE L. FERNANDEZ,
Secr. pro tem. (Rubric.)

This dispatch is noted down in the book of entries upon adjudication of unoccupied lands, page 8.

(Signed) FERNANDEZ. (Rubric.)

His excellency the governor *pro tem.* has ordered that this grant be noted down in the prefecture of the second district.

(Signed) FERNANDEZ. (Rubric.)

Los Angeles, *February 9th*, 1842.

Let note of this be taken.

(Signed) ARGUELLO.

Note has been taken of this title on page 1 of the corresponding book kept in the prefecture of the second district.

Los Angeles, February 9th, 1842.

(Signed) JOSE R. ARGUELLO,
Secr. (Rubric.)

(Add.)—Duly certified by U. S. surveyor general for California to be true, full, and correct copy of the original expediente of the grants to Ignacio Palomares, Ricardo Vejar, and Lewis

122 Arenas of the ranchos of San Jose, Addition to San Jose, and Azusa, as the same is on file in the Spanish archives of my office, etc.

JOS. STRATTON,
U. S. Surveyor Gen'l Cala.

Exhibit D (2.)

(Copy in favor of Don Enrique Dalton, of the place of San Jose, year 1846.)

Juan Gallardo, first alcalde and judge of first instance of the city of Los Angeles, certifies that in the protocal of this year, on leaf forty-two are found the following proceedings:

Note.—On this the twenty-seventh day of the month of February,

one thousand eight hundred and forty-six, on which was concluded the regulation of the expediente of the partition of the rancho of San Jose, the parties asked that the same should be annexed to the protocal, and I, the judge, according to their solicitation, ordered that on this day the same should be annexed to the said protocal as the same in fact is found annexed, and I make this entry in the proceedings and sign with the assisting witnesses according to law.

JUAN GALLARDO.

Assistant, IGNACIO CORONEL.
Assistant, LUIS JORDAN.

123 At the same date the expediente of Dalton and partners was annexed. (Rubrico.)

To the señor justice and first alcalde of this city:

We, Ricardo Vejar and Henrique Dalton, residents of this jurisdiction and owners of the rancho San Jose, before your honor, in due form of law, represent that, the property being recognized as being in three shares (acisines), one of which belongs to Don Ignacio Palomares, and it being to the interest of your petitioners to make the divisions of the lands of the said rancho, we hope that your honor will be pleased to order the partition to be made in conformity with the laws, so that *such* one of the owners may establish the respective boundaries as an essential requisite in the titles of acquisition.

Wherefore we pray your honor, senor justice, to cause to be done what we have asked for in our petition, obligating ourselves to pay such costs as may correspond to each one, swearing to what is necessary, etc., and hoping that you will admit this on common paper, since there is no stamped paper in this place.

Los Angeles, November 16th, 1845.

At the request of Don Ricardo Vejar, Juan Bandini, Enreque Dalton.

Angeles, November 16th, 1845.

124 The foregoing partition being presented and admitted in due form of law, let the Señor Don Ignacio Palomares be notified to appear as one of the shareholders in the lands referred to, as also the petitioners, to the end that the judge, having heard therein expositions, *he* may proceed to take the respective proceedings in accordance with the laws. Thus I, Vicente Sanchez, first alcalde and judge of first instance, decreed, ordered, and signed with the assisting witnesses, according to law.

VICENTE SANCHEZ.

Assistant, ANTONIO F. CORONEL.
Assistant, D. SEPULVEDA.

ANGELES, *December* 2*d*, 1845.

At the same date appeared Don Ignacio Palomares, and as the petitioners are not of this place the said Palomares was notified of the foregoing petition of the Señors Dalton and Vejar, and being in-

formed as to the contents of the same he said that he would not oppose the partitions of the Rancho San Jose as one of the shareholders, giving him the part that belonged to him, since he is in favor of the partition, so that he may know what is his legitimate property, but that he is opposed to paying his portion of the costs of said partition, for the reason that he paid a larger portion of the costs in attaining the title for the said rancho. Wherefore, if the Señors Vejar and Dalton will pay the costs of making the
125 partition he is willing that the same may be made whenever they please. Thus he answered and signed with me and the assistants.

VICENTE SANCHEZ.
IGNACIO PALOMARES.

Assistant, ANTONIO F. CORONEL.
Assistant, LUIS JORDAN.

ANGELES, *December* 13*th*, 1845.

At the same date appeared Don Enrique Dalton, the Senor Vejar not having appeared to the said Dalton, [and] being informed of what had been said by the Senor Palomares he replied that for his part he would not be responsible for that portion of the costs which corresponded to Palomares', since this gentleman had paid no costs on his (Dalton's) account, but that he would obligate himself to pay such portion of said costs as corresponded to him. This he said and signed with me and the assistants.

VICENTE SANCHEZ.
ENRIQUE DALTON.

Assistant, ANTONIO F. CORONEL.
Assistant, LUIS JORDAN.

ANGELES, *January* 19*th*, 1846.

The Señores Don Enrique Dalton and Don Ricardo Vejar having petitioned for the partition of the Rancho of San Jose, I shall proceed, with the assisting witnesses, to make said partition of the
126 said rancho, and if it should appear that Don Ignacio Palomares bore the expenses of the other possession the matter will so arrange in accordance with justice. Thus I, Juan Gallardo, first alcalde and judge of first instance, deemed and signed with the assistants according to law.

JUAN GALLARDO.

Assistant, IGNACIO CORONEL.
Assistant, FRANCISCO BALLESTEROS.

On the 6th day of February, 1846, I sent an official notice to the Señores Colindantes informing them that I was going to make a measurement of the rancho of San Jose for the purpose of making a diagram and a partition of the place between the Señores Don Enrique Dalton, Don Ignacio Palomares, and Don Ricardo Vejar and no exceptions being taken this entry was made in the proceeding.

JUAN GALLARDO.

Assistant, ANTONIO F. CORONEL.
Assistant, VASITO BALDES.

Whereupon I appointed two official cord-bearers, who were Don Diego Sepulveda and Don Ignacio Reyes, who made oath that they would faithfully and legally discharge their duty as cord-bearers; whereupon I made this entry upon the proceedings.

JUAN GALLARDO.

Assistant, ANTONIO F. CORONEL.
Assistant, BASILIO VALDES.

Whereupon, in view of the facts that the Señores Don
127 Gaspar Farrell was going at the request of the instructed parties for the purpose of making an exact measurement of the lands and draw a diagram or map of the same, I caused him to appear with me and the assisting witnesses; whereupon he made oath in due form of law, under which he offered to discharge his duty as surveyor legally and faithfully, and to make the measurement with exactitude; in testimony of which he signed with me and the assistants and the assisting witnesses, according to law.

JUAN GALLARDO.
JASPER O'FARRELL.

Assistant, ANTONIO F. CORONELL.
Assistant, BASSILIO VALDES.

Whereupon being on the lands at San Jose, with the cord-bearers and the surveyor, Don Gasper Farrell, for the purpose of commencing the remeasurement and the respective partition between the Señores Don Enreque Dalton, Don Ignaceo Palomares, and Don Ricardo Vejar, I caused a cord to be measured of the length of fifty-five varas, to each end of which was attached a wooden stake; and by my direction they were about to measure the first cord when the surveyor remarked that, inasmuch as the sierra of the said Rancho of San Jose and Azusa made many turns, it would be necessary to run lines so as to enable him to ascertain the area of the land by calculation; he therefore requested the judge to observe the
128 process of measurement, and that he would make a general plan, with the necessary applications; whereupon the undersigned judge continued by the side of the surveyor as the measurements were being made until nightfall, when the work was suspended, and this entry was made in the proceedings, which I signed with the assisting witnesses, according to law.

JUAN GALLARDO.
JASPER O'FARRELL.

Assistant, ANTONIO F. CORONEL.
Assistant, BASCHO VALDET.

On the 7th the measurements were continued as on the preceding day, being suspended at nightfall.

RUBRICA.

On the eight of February of the same year the measurement was continued as on the preceding days, being suspended at nightfall.

RUBRICA.

On the ninth of the same month the measurement- were continued in the same order, being suspended at nightfall.

RUBRICA.

On the 10th of February of the same year the measurements were continued in the same manner, in testimony whereof a note was made.

RUBRICA.

129 The eleventh of the month was occupied in drawing a diagram or general plan of the rancho, which plan is found at folio five of the protocol, together with an explanation of the same.

On the following day the measurements were continued in the hills of San Felipe, nojuera (monument) a, y, a, b, c, d, e, f, g, h, i, k, as shown by the small letters, and it resulted, by direct measurement, as shown by the line A B, twenty-one thousand seven hundred and sixty varas, course east 120° 15′ south, the line terminating at the arroyo of San Antonis at the letter B. On this line the course was changed, and a line was run obliquely, as shown by the letters K, B, M, on account of the bushy character of the land; this measurement giving a result in the total line D of seventeen thousand seven hundred (17,700) varas in length; course north 13° west, terminating at the rock which is on a little hill, mojoacid D, and the boundary with the Rancho of Chino. From this point another oblique measurement was made on account of a mistake made by the individuals who pointed out the boundaries, and is shown by the letters M, N, O, P, giving as the true length seventy-six thousand five hundred varas; course E. 37 degrees N., and marked with the letters D E, the line terminating in a portesudo, where there is a stone for a monument. From this point the line was run E. 38 degrees N.

130 three thousand nine hundred and twenty (3,920) varas, the line terminating at a walnut tree which stands on the skirt of a little hill, which is the boundary with Jose de la Luz Linares, line E P. From the walnut tree a course was taken N. 24 degrees 35 minutes west, and in the direction of the live oak (sucino) de la Finaja, and there were counted six thousand two hundred and ninety (6,290) varas, the line terminating at the said live oak, as shown by the line P Q.

From this live oak of the Finaja, as a marked boundary, a direction was taken W. 18 degrees S. along the edge of the road leading to San Jose, and there were counted two thousand six hundred (2,600) varas, the line terminating at the little red hills (lounta Colorados) line marked with "q."

From this little red hill (by mistake) the line was run a little within the boundary, as shown by the letters V S; but the mistake being observed, the result was six thousand three hundred and twenty-five varas, course N. 36 degrees W. the line terminating at the corner of the corral, which is on a little hill where is situated the ranch house of Azaza.

From this point the line was run a little inside of the boundary, for the reason that the interior was thus run; but, taking the straight

line G A, it resulted that there were two thousand one hun-
131 dred varas, course N. 21 degrees E., the line terminating at the little hill where the measurement was commenced.

Wherefore the surveyor stated that the capital letters are those that make the true boundary, together with the small letters p q r, but that the other small letters only represent the measurement made for the reason before stated. He also stated that the "variation" in the said diagram is 12 deg. to the northeast; whereupon the measurements were concluded to the satisfaction of the parties. Whereupon I make this entry in the proceedings and sign, with the assistant witnesses, according to law.

JUAN GALLARDO.
JASPER O'FARRELL.

Assistant, ANTONIO F. CORONEL.
Assistant, BACELIO VALDEZ.

Whereupon I proceeded to the partition and possession of the land, giving to each one of the three partners (socios) Don Enrique Dalton, Ignacio Palomares, and Don Ricardo Vejar, and all were satisfied except Don Ignacio Palomares, who in a disrespectful manner left, saying that he was not satisfied, and I only gave solemn possession to Don Enrique Dalton, through his agent, Don J. Reid, and to Don Ricardo Vejar, who remained satisfied with the third part
132 of the Rancho of San Jose — said possession of these places; whereupon the final act was made, which I authorized and signed, with the assistant witnesses, according to law.

Angeles, February 12th, 1846.

JUAN GALLARDO.

Assistant, ANTONIO F. CORONEL.
Assistant, BACELIO VALDES.

Let a testimonijo (certified copy) be given to the parties who may desire it, for their security and protection. Thus I, Juan Gallardo, first alcalde and judge of first instance, decreed, ordered, and signed, with the assistants, according to law.

JUAN GALLARDO.

Assistant, ANTONIO F. CORONEL.
Assistant, BACELIO VALDES.

NOTE.—To the end of this expidente is attached the deseño or diagram. In witness whereof I make this note.

A testimonio was given at the present date.

The foregoing is a correct copy from the original, as found in the protocol of this year, with which it has been composed, and is now found on the seven folios of common paper, which is used for want of stamped paper, together with the diagram attached to the same.

JUAN GALLARDO.

Assistant, IGNACIO F. CORONEL.
Assistant, JUAN BOUET.

133 I hereby certify the foregoing to be a correct translation of the partition of the Rancho of San José, made in 1845, between Ignacio Palomares, Henrique Dalton, and Recardo Vejar, the original of which is on file in the office of the U. S. surveyor general for California.

December 30, 1873.

R. C. HOPKINS.

To the introduction of which document plaintiff excepted.

Admitted that Juan Gallardo was the acting alcalde, premero, and judge of the first instance in the city of Los Angeles in the years 1845-'6; that the original of the foregoing document was by said judge delivered to said Dalton, and by him filed before the U. S. land commissioners in the matter of his claim, and that the map introduced in evidence by the plaintiff is a copy of the partition map made by Gasper O'Farrell under said decree of partition, excepting the small red lines traced thereon, and that these represent the lines of said ranchos as finally patented by the U. S. Government.

Defendants then read in evidence the following map, filed by county assessor with the county recorder, 8th of June, 1880, together with the endorsements thereon: Defendant's Exhibit 10.

134 Defendants read in evidence a lease executed by Henry Dalton and F. L. A. Pioche to Dennis Cluney, dated 1st January, 1869, which describes the property leased as being a part of the rancho addition to San Jose, in that portion allotted to said Dalton by the original partition, according to the O'Farrell survey. Said tract is further described as being near Mud Springs, and bounded on the east by lands of Francisco Palomares.

Defendant then read in evidence certified copy of the complaint in ejectment, in the case of Henry Dalton against Dennis Clancey, in the 17th district court of the State of California, filed therein October 10th, 1867, in which complaint it is alleged "that on the 1st of January, 1865, the plaintiff was lawfully seized and possessed in fee-simple of that certain tract of land in Los Angeles county, California, commencing where the San Bernardino road intersects the boundary line which separates the portion of the Rancho San Jose belonging to Ygnacio Palomares from that belonging to plaintiff, the north end of said line on the mountains marked on the map of judicial division X, and its southern end marked H."

Plaintiff read in evidence the petition of Ygnacio Palomares filed before the land commissioners for the confirmation of his title, which is substantially set out in the patent first described herein.

Defendant then read in evidence agreement of Henry Dal-
135 ton with F. L. A. Pioche, dated July 13th, 1865. Said agreement recites that Dalton is the owner of certain tracts of land described as follows: All that certain tract of land known as the Azusa, situate in Los Angeles county, and now in the occupancy of said Dalton, bounded as follows, to wit: According to a map of the same annexed to the testimonial, showing a partition of the place called San Jose, between Ygnacio Palomares, Ricardo Vejar, and

Henry Dalton, which is on file in the archives of the land commissioners in case No. 364, the land hereby referred to being the portion thereon designated as the land of Henrique Dalton, said agreement conveys to Pioche an undivided half in the aforesaid ranches.

Defendant read in evidence mortgage of Henry Dalton to F. L. A. Pioche, dated June 1st, 1864, — conveys "the Azus rancho, one square league of land, and the Rancho San Jose Addition, containing one square league of land, and the Rancho San Jose; also mortgage, dated 17th of May, 1871, by said Dalton and wife, conveying said land as last above.

FRANCISCO PALOMARES, sworn by defendants, testified as follows:

I am Francisco Palomares, the son of Ygnacio Palomares, one of the original grantees of the ranches in question; am one of the defendants; forty-two years of age.

136 (Admitted that witness is living on the San Jose rancho.)

Witness resuming: Have lived since the partition on the lands in question. From the time of my earliest recollection the lands of the Rancho San Jose and San Jose Addition were claimed severally by Ricardo Vejar, Henry Dalton, and Ygnacio Palomares, my father, and I know the dividing lines between the different parts of the ranch claimed by those parties; and my father always maintained an exclusive authority over his part up to certain lines, without any one interfering with his use of that part of the ranches within those lines. In the year 1855 the first squatter settled on a part of the ranches called Mud Springs. My father bought out his improvements there the same year—corrals, hay, house, etc., and Mr. Dalton came to exact from him the delivery of these things he had bought from the squatter, on the ground that they were upon his land. My father had in the meantime moved the house on his land; he settled the matter with Dalton by giving up the corrals and other stuff which were upon the land and giving him two or three beeves in satisfaction of what he had taken off, for Dalton threatened suit against him for moving property off his land.

137 (Witness here points out Mud Springs on the Gaspar O'Farrell map of partition, at a point where a cross is marked, and within the boundaries of the tract claimed to have been allotted to Dalton.)

Witness resuming: During all the time from 1855 up to the commencement of this suit our vaqueros were prohibited from going on the lands shown upon the dividing lines of this map by Mud Springs, on the lands on the other side of the partition line, they being the private land of Mr. Dalton. In the same manner his vaqueros were prevented from coming on to the lines recognized by my father. That has been done, because at that time there was no other mode of division of lands pastured with stock. Afterwards, as it was impossible to hinder stock from going on lands, there was an arrangement made between Henry Dalton, my father, and Ricardo Vejar, Wm. Workman, Juhan Rowland, Juan Rowland, and

Romans, by which Don Henrique Dalton agreed that the stock might run over on to his land, they paying a rental for that privilege of a steer annually. I often delivered the steer to him myself. This was in the year 1856–'7. Afterwards, on account of Dalton's major domo having killed some beeves of the other parties, they broke up the rental arrangement.

After this they for some time—some years— they were at loggerheads, and then they became friendly again, till his brother-in-law took twenty colts and shut them up in a corral.

138 Afterwards Mr. Dalton rented the land in the neighborhood of Mud Springs for several years to one Clancey, and Clancey went to my father to show him the dividing line up to which he might plow.

Afterwards, when I came in to manage—take charge of the ranch and property left by father to my mother—Mr. Dalton came to me to solicit me to enter into an arrangement with him for a new partition against Phillips. In the year 1875 I rented from Louis Wolfskill the place called Mud Springs—paid $30 a month; was there four months, paying sometimes my rent to Wolfskill and sometimes by his order to Dalton.

This receipt (showing it) shows the first rent which I paid to Mr. Wolfskill. This receipt is signed Henry Dalton, by Louis Wolfskill. Date, April 7th, 1875.

Witness then read in evidence a letter rec'd by him from Henry Dalton, as follows:

AZUSA, *February 14th*, 1876.

Señor Don Francisco Palomares.

MY VERY DEAR SIR AND FRIEND: Your having said that the establishment of Mud Springs was abandoned and that I could dispose of it, *that* I determined to transport hither all that existed here. You didn't tell me anything about the corral which

139 you now demand, and as I always had a corral there, and if have to sever the improvements which are made in such place it would be best to aband the land, as the rents would not reach to it, although I don't recognize any property elsewhere in —. Notwithstanding, you can send your wagon and I will deliver the boards, which are nailed in sections, which still exist.

Your servant and friend,

HENRY DALTON.

Witness resuming: The explanation of this is that when I finished my lease—my renting of Mud Springs—I notified Mr. Dalton that I had left the land; told him the house there was being destroyed and carried off by other persons, and he had better remove it. I had removed my sheep for some days and hadn't time to take my corrals away, and he removed the corrals as well as the house.

Afterwards Dalton came to me to get me to arrange for a common fight against the squatters. He wanted to enter into an arrangement with Pioche to give him a tenth part of the lands he might get on a new survey in excess of the Hancock survey. I said my mother

would give one-half of all she might gain, they to pay half the expenses. Instead of making the contract with Pioche it was made with Mr. Goold, and Mr. Dalton dictated the instrument, the contract that was drawn up, with the intelligence that it should
140 refer to the part of Palomares. It was dictated by him. Ricardo Vejar all this time had the same claim and possession which is now occupied by Louis Phillips.

Q. Under what claim?

A. Under the claim of ownership under a partition which had been had; under a claim that the lines were established by partition; they claimed their lines the same that we claimed ours, under the O'Farrell partition; I know this map (Gaspar O'Farrell map of the partition shown witness); I have known it twenty-five years at least; all during that time Ygnacio Palomares and his successors, Henry Dalton and his successors, Ricardo Vejar and his successors, have recognized the map, the monuments fixed upon the ground, the lines traced upon the map, as showing the lines of the three parties.

They have occupied the lands, as to the boundaries recognized in the map, by their sheep, their cattle, sowing the land, and leasing it.

The first time I ever heard of this partition being attacked was about a year before making the Goold contract; Dalton then said in case of not having success in obtaining new measurement, then we will attack Phillips, who is on the best fraction; after this period there was no change in the way the lands were occupied; they continued to be occupied in the same way—each one occupying his part exclusively.

141 I have never as to my knowledge known Henry Dalton to claim the right to make use of any [of] the lands set off to Palomares and Vejar on the O'Farrell map; never made any such claim to me, and never knew of his making it to any one else.

The Palomares family have claimed the right to make use of the lands set off to them on the O'Farrell map; Mr. Phillips, and before him Ricardo Vejar, have claimed the right to make use of the lands set off on said map to Ricardo Vejar. About two years since Mr. Dalton came to my house with a gentleman from San Francisco, and offered to give me a guarantee that we would not be disturbed in our possession if I would make no opposition to an action which they wished to establish against Louis Phillips for a new partition.

I have paid all taxes which have been assessed to me and to the successors in interest of Ygnacio Palomares. I and Phillips paid the expense of getting the patent to the Rancho San Jose. I asked Dalton to pay a part and he refused, on the ground that the lands in which he was interested in those lines were very small. The same thing occurred when I asked him to pay a part of the expenses of the survey and after patent arrived.

Cross-examination:

142 Phillips and I received a patent from the U. S. Government for the Rancho San Jose. I had it recorded in 1877 on the demand of Dalton. Phillips paid part of the expense of re-

cording, and he wished it to be recorded. Mr. Phillips and I claim under that patent.

On the final survey there were excluded, I think, about 5,000 acres, which were included in the bounds of the O'Farrell map; the greater part of this was excluded from the portion allotted in said map to Palomares. Dalton lost from that part of the San Jose set off to him about 500 or 600 acres; in all, I think, Dalton lost more than 1,300 acres. I believe the patent takes in of arroyo land claimed by Phillips a large amount not included in O'Farrell partition.

Since the final survey of the Rancho San Jose and San Jose Addition I have not been present at any coversation between Dalton and Phillips with reference to the rancho, nor have I been present at any conversation between the owners at any time since the decree of the U. S. district court in the ranch cases.

Ygnacio Palomares died in 1864. It was the custom of the country to let cattle run more or less over the boundary lines, but Mr. Dalton was there always raising points, touchy, and he always made objections to the cattle coming over onto his land, and to save trouble we made this arrangement.

143 Question. Prior to the time that the patents of the various ranchos were issued didn't the different owners or claimants establish boundaries which they generally recognized as the boundary lines of the land that the respective parties were to use?

Objected to by attorney for defendant Phillips, on the ground that the question and response called for is immaterial, irrelevant, and incompentent; that what people generally did is not evidence.

By the COURT: It may possibly go to qualify the possession.

Objection overruled (ruling No. 1), and defendant Phillips duly excepted.

Answer. It never was the general custom in that neighborhood. I don't know how it was elsewhere. We were only in the custom of pointing out our lines in case some squatter came there; if any one came there Mr. Dalton would say he is on my land.

I do not know, but I think Dalton, Ygnacio Palomares, Vejar and their successors in interest did not unite in pressing their claim before the Government of the U. S. for patents to San Jose and the Addition; my father and Mr. Dalton were not good friends; the number of acres inside the patent lines I claim, under the O'Farrell survey, is 5,800 acres, more or less.

144 I think Mr. Phillips has thirteen or fourteen thousand acres; Dalton has six or eight thousand.

Question. Did Ygnacio Palomares or his successors in interest cooperate with Mr. Phillips in the trying to have the patent to the San Jose issued as it now is?

Defendant Phillips objected to the question as being in contradiction of the record evidence already, and as being secondary evidence.

Objection overruled. Ruling No. 2. Defendant Phillips duly excepted.

Answer. I and Phillips co-operated to obtain the patent as it now is, because we could not get any more, and we could not get any aid from Dalton to obtain any more. Mr. Goold, who had been employed by Mr. Dalton, neglected the matter, and didn't do anything. We were in a position that the lands would be full of squatters, and at last we applied for the patent under the last survey.

LOUIS PHILLIPS, sworn on behalf of defendant, testified:

I am one of the defendants. I reside on the San Jose rancho; have lived there since 1863; have resided in this county since 1851. I bought from Tischler; he is the person mentioned in the
145 deed as purchaser from Vejar. In the winter of 1863 I bought a half interest in the cattle from Tischler. The cattle were scattered everywhere in that neighborhood. I had charge of the cattle from 1863 to 1866. After I took possession of them I gathered them and put them on my part of the ranch. Dalton was living at the Azusa from 1863 to 1866, adjoining the San Jose Addition. I saw Dalton during that period. I went there in 1864, the first time I went there. I go every morning to gather my horses and cattle from his land and bring them home. He, Dalton, told me he had made arrangements with Tischler for him to get one steer a month for pasture of cattle and horses on his (Dalton's) land—his part of the ranch; the part that had been set off to him. I did not learn from Dalton at that time where the lines were, but did afterwards, in 1865, before my purchase. In 1865 I was at Clancey's, and he told me Dalton wanted him to pay $20 per month for living there. I told him I thought he was on my land. Clancey told Dalton of this. Mr. Dalton then wrote me a letter to come over a certain day and he would show me the lines. I went over and his son was there; he poited out the lines. He told Clancey that he was on his land. He then indicated to me the line. He indicated the line of division according to the O'Farrell survey.

146 (Witness here indicated a line on the O'Farrell map as pointed out by Dalton, indicating the division line thereon between Dalton and Vejar.)

I was then renting from Tischler. I had at that time the land set off to Vejar by the O'Farrell survey.

(Witness here traced on the map of O'Farrell the boundaries of said Vejar allotment.)

And the lines Dalton showed me were the lines bordering the Vejar tracts. Ricardo Vejar pointed me out the lines in 1864.

Question. Who showed that as his line?

Answer. Ricardo Vejar, in 1864.

Question. In 1865, we met at Mud Springs; just about here he was going to run me out that line; there was no talk about the partition at that time. In 1865 Dalton and I met at Mud Springs, just above here; he was going to run me out that line. There was no talk of the partition at that time; he was only going to convince me that Clancey was not on my land; that he was on his land.

When I bought I had this map exhibited to me by Tischler—this map.

(Witness here produced a traced copy of the O'Farrell map already in evidence.)

Tischler said this is my land, pointing out the part allotted to Vejar. I paid a valuable consideration for the land. Since 1864 the land allotted to Vejar on said map has been held and occupied by me; no other person has set up any claim to my part of
147 the land; I have put $40,000 or $50,000 in improvements on that land; there are two towns built—by purchasers from me on the lands which I sold—on my land, Spadra and Pomona; about three or four hundred inhabitants in all. I have fenced and improved a good deal of my land.

Mr. WIDNEY: We put it down in the shape of a stipulation on the plaintiff that in case of a repartition the plaintiff is willing and desirous that the partition shall be so made of the lands that may be located to the Palomares tract or to the Phillips tract — all persons to whom they may have sold prior to the commencement of this suit—we don't desire in any way to disturb those persons in their lands or improvements.

At the time I purchased the land I would not have purchased it at all had I supposed it was undivided, or that Dalton had any interest in it; I had never heard at that time that Dalton made any claim to the Vejar tract; since my purchase of the land I had conversations with Dalton with regard to the land. About three or four years ago I had a survey and had the lines run off together at our joint expense; we, Slauson, Dalton, and myself met and ran the line.

(Witness here pointed out the line X, indicating the said line on O'Farrell map.)

We made this survey because Dalton had a lot of wood cut there; I thought the choppers were on my land and had them arrested;
148 Mr. Wolfskill said they were not on my land. Finally we agreed to see. Then Mr. Slauson, Dalton, and myself ran the line. We took the O'Farrell map with us. Mr. Dalton had it. He proposed to run a furrow, and I went with him. At the same time I had rented to a Frenchman there. Dalton took possession of his sheep, and made him pay $200 or $300 for trespass. He had crossed over Dalton's line. This occurred three years ago and after the patent. I have paid taxes on that land ever since my purchase. No tax has been assessed on that land but what has been paid by me.

Cross-examination:

At the time I purchased, the O'Farrell map was given to me with that deed. The deed was given to me here in town, and I didn't examine *them* till I got home. I did not have an attorney to examine the title, nor did I make any examination of the county records.

Q. At that time, then, you didn't know whether the deeds and conveyances or mortgages, if any, that were executed by Dalton, were to the whole ranch or undivided interests or of the segregated tract?

A. I knew all about it, so I didn't want to examine. I knew all about all the circumstances.

Question. So that you purchased with a full knowledge of the claim that Dalton might have?

Answer. Yes, sir.

149 Q. And with a full knowledge of the claim and facts shown by the records, you took your deed in the form [in] which it was issued to you by Tischler and Schlessinger as a satisfactory conveyance?

Answer. Yes, sir.

Redirect:

Question. You say you knew all about Dalton's claim?

Answer. I said Tischler's claim. Before I bought I knew Dalton had land there, because I went and paid him rent; but I never knew that he claimed any part of the land I bought. I did not know anything about Dalton's claim at that time. I did not know at that time of any claim by record or otherwise that Dalton had to the part I bought.

Recross-examination:

I had no attorney to examine the title at the time of the purchase, because I was acquainted with Tischler's interest in the property. I did not then know what the records of Los Angeles county showed as to the mortgages and deeds that Dalton had executed with reference to the ranch. I made no examination.

Question. You simply bought, taking your chances, whatever it was?

Answer. Yes.

150 I knew nothing about a decree of the United States court confirming the title; I heard of that decree lately, but not at the time of the purchase; Fischler did not inform me of the decree; I bought without making any examination of the record title at all; I regarded the recorded title of the United States good, and I took all the chances; I knew he was in possession there ever since I was in the country, and I never heard anything against it, and I regarded that good. When I say that at the time of my purchase I knew of Dalton's claiming land, I mean under the O'Farrell partition—the part towards Azusa. When I went there before I bought. Vejar showed me the lines as near as he could—his part, Dalton's part, and Palomare's part; that was before I had any idea of buying; rode all along and showed it to me. Tischler subsequently, when I leased of him, showed me the lines; he pointed out the part he occupied, the point Palomares occupied, the part Dalton occupied, and indicated which was his land and the tracts of the other two. That was before I had any idea of buying; it was done so I could tell where to run the stock. The first time I had a conversa-

tion with Dalton was when I went over to Azusa to ask him permission to gather up the cattle; this was during the time of my lease.

151 Question. Then I understand you to say that the only time you had conversation with Dalton was during the time of the lease?

Answer. That was the first.

Question. Then the next was three or four years ago?

Answer. I may have had conversations between, but not of any importance.

The strip on the south side of my tract I bought from a squatter, and gave him $1,200. I don't know whether it belonged to the rancho or not. I preferred buying him out to going to law. I bought him out. I did not know he was outside the survey. I *did* not know where they live now; never had the line surveyed. I could not tell. I did not give them a chance to contest the survey. That is the way Dalton should have done. If I had been over where Dalton was, I should have got every inch without going to law.

SATARNIAO CARRION, duly sworn for defendant, testified as follows: I have been living there near Mud Springs for about 18 years. The land belonged to me over 20 years.

I have known the land there 30 years; I have during this time known of the old partition of the Ranchos San Jose and San Jose Addition; I heard of it long time ago; I knew about it particularly when Ygnacio Palomares sold me a piece of the land; this was about 1855. I learned then about the lines; he showed me the lines which run from the encino to the Tinaja.

152 Some time afterwards Mr. Dalton rented some land to sheep men, and he came to my house — to go along and show them the lines; this was some time ago; I went with him and he showed the monuments and pointed out the lines. He showed me the same lines that Y. Palomares had showed me when I bought of him, and where the San Bernardino road passes he showed me the line also— or rather he showed those lines to the sheep men; the line that ran north and south towards the mountains. I went with him in a carriage; afterwards I saw them running the line about a dispute about some wood-cutters; they ran it from the encino up to where my line is; Phillips, Palomares, Dalton, and a good many others were there. During all the time I have known the land Mr. Dalton has used the land from that line westward towards the Azusa.

Question. Has he made any use of the land to the east of that line?

Ans. After that once he came to rent some land there to a sheep man, and he came upon my land and I told him it was my land, he could not rent that, and he went back and rented other land. I have known of Phillips being there ever since he went there. Since he went there he has used the land which belonged to Ricardo Vejar.

Witness here, pointing out the Vejar tract as described on the O'Farrell map, said: This is the land he occupied, and, point-

153 ing out on said map the dividing line thereon marked between Dalton and Palomares, said: This is the line which Mr. Dalton showed to the sheep men the first time they came; he came to the line of the Cienega and said: This is my line. The land occupid by Phillips was south of the Palomares land.

Cross-examination:

Part of my land is fenced, but it does not extend to the western line.

RANSON VEJAR, sworn for defendants, testified: I am the son of Ricardo Vejar, deceased; I have been living on the San Jose rancho ever since it was founded; I am 51 years of age; I saw them in 1846, when the partition lines were run; they made partition of the ranch, and I know the lines, giving a portion to Dalton, a portion to father, and a part to Y. Palomares. Since the partition the respective parties have occupied respectively, with stock—cattle, horses, and sheep—the part which was assigned them. Palomares occupied the part set off to him, Dalton had his separate line and occupied his part; my father delivered the ranch to Tischler in 1863 or 1864; since that partition the same mode of occupation has prevailed always; we have always occupied the lines we had under the partition, and others occupied their lines; there has been only the one partition.

154 E. J. A. BILDERAIN, sworn for defendant, testified:

I was present when there was a dispute between Mr. Phillips and Mr. Dalton about lines on the San Jose. I was sent there by Mr. Palomares to go and see the lines of Mr. Phillips and Dalton. This was about four years ago. We went right to the line. There were present there Mr. Dalton, Louis Phillips, Mr. Slauson, myself, and one or two others. We met there on the ground. They started from the encino, and they run the dividing lines between Dalton and Phillips, and they, Dalton and Phillips, agreed upon the line. They were running the line between Phillips and Dalton; that was the object of running the line. This was in my presence. They had some dispute about cutting wood on the line, and that was the object of running the line. I don't know anything about the nature of the controversy.

Cross-examination:

Phillips had had the wood-cutters arrested for cutting and destroying timber. The result of the survey was the line was run, the matter settled there, and the men discharged.

JOSE MASCAREL, sworn for defendant, testified:

I acted as the agent of Miguel Leonis in renting some lands from Dalton in May, 1877, for pasture. P. Bellearde was the major domo of Leonis, and had charge of the sheep.

155 P. BELLEARDE, sworn for defendant, testified:

I occupied some land of Mr. Dalton's as major domo for Miguel

Leonis, in charge of his sheep, in 1877. Mr. Dalton at that time pointed out to me the division line between him and Palomares and Phillips.

Mr. WIDNEY: I suppose we may state that substantially the O'Ferrall survey in its out boundaries corresponds very nearly with the old juridical possession.

Mr. HOWARD: I think that is correct.

Defendant read in evidence the following:

Real Estate and Improvements. Description.

Five hundred acres of the Azusa rancho, being the homestead of Azusa, from point of hills back of vineyard, running E. 39 chains, N. 128 chains, W. 39 chains, S. 128 chains, to the point of hills; valued at $9,000; improvements, $2,000.

Also 3,900 acres of Rancho Azusa, bounded north by San Gabriel Mountains, east and south by lands occupied by squatters, and west by San Gabriel river; valued at $7,000; improvements, $300.

Also 4,400 acres of San Jose Addition, bounded north and west by Government lands, east and south by Rancho San Jose; valued at $9,800.

156 Also 1,500 acres of Rancho San Jose, bounded north and west by San Jose Addition, east by Palomares, and south by Phillips; valued at $4,000.

STATE OF CALIFORNIA, *County of Los Angeles,* } ss:

I, —— ——, do swear that I am a resident of the county of ——; that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled, and which is not already assessed this year; and that I have not, in any manner whatever, transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same or of making this statement.

G. W. MORGAN,
Sec'ty M. C. L. & W. Association.

Subscribed and sworn to before me this — day of ——, A. D. 1879.

A. W. RYAN, *Assessor.*

T. D. HOLLIDAY, *Deputy.*

JOHN G. DOWNEY, called for the defendant, sworn, testified:

157 I know Henry Dalton. I and Judge Howard were appointed by the Pioche estate to make an estimate of the value of lands for the Azusa and additional lands; this was for a loan mentioned in the mortgage. Mr. Dalton showed us the lines from the

San Gabriel river to his house, and from there, following east, along the foot of the hills close to what is known as the Mud Springs. He undertook on that occasion to point out to us the eastern boundary of his ranch. He gave us that point where we arrived at as being the division line.

Question. Between him and Palomares on the other side?

Answer. Palomares' name was not mentioned—the Mud Springs. I didn't know what ranch that was located on.

Question. At any rate he gave you that as his eastarn boundary?

Answer. He told us that was the boundary of the land we wanted to see.

G. W. MORGAN, called in rebuttal for plaintiff, testified:

I was one of the board of directors of the Mound City Land and Water Association, and one of the principal parties connected with the negotiation from Dalton for purchase of property purchased of him from Wolfskill, Seawell, and others. We supposed the corporation was buying an undivided one-third interest in those ranches—the San Jose and San Jose Addition; that was so represented to us.

158 Question. Did you have any negotiation with Mr. Phillips with reference to repartitioning it and establishing the final or boundary lines, and executing conveyances backward and forward to settle and adjust the partition?

Answer. We had such negotiation, I believe, in 1878, My memory is, a committee was appointed to see him and arrange for adjusting the matter; in answer to us he met our board in the city. Mr. Phillips maintained at this interview that a partition had been made. We represented in justification of our position, gave the bills that had been given to us by Mr. Dalton, and his statement in regard to it; also Mr. Wolfskill. We were told by Mr. Dalton that there had been an understanding reached between himself and the other parties in interest as to occupation, and said and found, and division was reached—each was to occupy certain boundaries for grazing purposes. Mr. Dalton maintained that that was only a temporary arrangement for grazing purposes. We proposed on that basis to reach a conclusion like this: Mr. Phillips would concede to lose a certain boundary, giving us several hundred acres more of land than what was in the boundaries. Mr. Phillips agreed upon certain conditions being complied with by the company to extend the lines and give us more land than was included by the old O'Farrel sur-

159 vey. Mr. Palomares also agreed to pay $500 and leave the old lines as to him. The lines marked exterior boundary on Defendants' Exhibit 10 show the lines that we agreed upon with Phillips and Palomares. In the assessment that was given by the Mound City Land and Water Association the lands were described over there as an undivided interest in the ranches; I did not make that statement; I don't recollect it now; I guess that is my signature; I suppose it was probably made out by the assessor and handed to me; I suppose it included somewhere about the quantity of land; I suppose it would have undoubtedly to be based upon the supposed

amount, perhaps, as I don't remember now. In the matter of the settlement of the boundaries the matter was written out by our attorneys, and we as a company adopted it by a resolution, and they stated before the board that whenever we lifted the mortgage that they would comply with the agreement; they didn't sign the paper; Palomares agreed to pay some consideration in adopting the final lines.

Cross-examination:

There were fifteen or sixteen hundred acres, perhaps, under the O'Farrell survey of the San Jose ranch allotted to Dalton in the original partition.

Mr. WIDNEY: 2,632 was the number of acres.

(Witness resuming.)

160 Q. At the time you made out that tax statement you say you were giving in addition to that the lands you thought you would get by settlement?

Ans. I don't know the reason it was made out that way; it was handed me by the assessor.

Question. Why then did you swear to a document describing the lands in San Jose as 1,300 acres bounded by Phillips when you say you had 2,600 undisputed and 665 acres which you got by this settlement?

Answer. I suppose, as I said before, I was indifferent. I didn't pay very close attention, I suppose he got it up right. He made the statement. I didn't make it out. This exterior boundary on the map was made on the map after the agreement with Phillips to include the 665 acres. This map of the company's lands was made by a surveyor. This map was made some time in the fall of 1878, perhaps 1879. I got him to make the map, explaining those lines in accordance with that understanding. When we made those negotiations to buy from Mr. Dalton we had no lines run on the ground by the surveyor till after the purchase; but at the time of the purchase Mr. Dalton showed us certain stakes and lines. He showed us a map known as the O'Farrell map, I think, before we made the purchase of him; that map showed a certain division made between Palomares, Dalton, and Vejar; certain lines and the names of those parties written within the lines.

161 Here O'Farrell map shown witness. Witness, proceeding, said: It was not that map; it was not the O'Farrell map. Mr. Dalton may have shown us this map, but the map he mainly showed us was another, which showed the United States patent laws. I think I saw this map (the O'Farrell map) at the time. We had a search of the records made. There was reference made by Mr. Dalton to something that he claimed was not a final partition; we so understood it at the time. He spoke of it that there had been an understanding as to the boundaries or occupation, and that Phillips, Palomares, and himself had occupied within those boundaries until the final patenting of the ranch, which had cut down the ranch, and he claimed to have lost more than any one else, and he

claimed a right for a new partition; that the old understanding for pasture purposes was not just to him, and the reason the partition in the first place was not final; it was understood the boundaries were not yet fixed by the Government; I was asking that, and he represented *we* would get more land themselves in the boundaries, as shown by the boundaries of occupation, as then occupied by the respective parties. He claimed we would get in a division several hundred more acres, and perhaps 2,500 acres. I did not go to Phillips nor to Palomares, or inquire of him whether it was understood by him to be a final partition. I knew the three parties and
162 their successors were occupying different parts of the ranch, and I made no inquiries of them as to how they understood that partition to be. I think I heard of O'Farrell map at the time of purchase. I knew there was a sort of partition, as Dalton claimed. I didn't know the actual facts. He, Dalton, represented that not final.

J. W. GILLETTE, sworn for plaintiff, testified:

The old O'Farrell map and the decree of partition of the court of first instance of 1846 has never been recorded in the recorder's office of Los Angeles county. I have heard that there was such a document in the U. S. surveyor general's office, but have not found it. We have had it in our abstracts. I have heard it was filed in the surveyor general's office.

Admitted that Stephenson would testify that Louis Phillips has in the Rancho San Jose 9,286 acres lying inside the lines of the patent and the O'Farrell partition and 84 acres in the Addition to Rancho San Jose; that Palomares has 10,421.20 in the San Jose within the patent and the O'Farrell survey, and that Dalton has 2,633.10 in the San Jose and 4,346.64 in the San Jose Addition within the patent and O'Farrell survey.

J. S. SLAUSAN, for plaintiff, testified:

I am the president of the Los Angeles County Bank, the
163 same corporation to which Wolfskill and Henry Dalton executed their mortgage *to* of the Ranchos San Jose and Addition.

Question. At the time the mortgage was executed what was the statement of the bank as to the interest it was getting, whether undivided or what?

Answer. It was represented and stated to me. I am acquainted with the quality of the land claimed by Palomares and as claimed by Phillips, and as to that land lying between the Dalton lines in the San Jose and San Jose Addition. I have been over a considerable portion of the San Jose Addition and the San Jose in controversy. Mr. Palomares' land I could not state much about, nor with Mr. Phillips, but generally know the character of them. With the water and quality of soil on Mr. Phillips' land, the water and quality of soil on the San Jose Addition and that portion of the San Jose which they claim as theirs under the partition, there is about five to one in value—that is, Phillips' part as he now claims it, is five times as valuable as to quantity and quality as that claimed to be

set off to Dalton under the patent lines—just about five times as much in the San Jose Addition from that Mr. Phillips has in that portion of his claim to be set off to Dalton by the partition. There are no facilities for irrigating the lands set off to Dalton; there is a little spring there for sheep. There is an artesian well; flows half-inch of water.

164 Cross-examination:

Putting the land back to the uses to which it was applied under the old Mexican usage, I should say there was a great difference in the value—three-fourths brush, one-fourth clear. I never heard of the old Mexican partition till after this suit was brought, then I heard of it at the time I was taking the land; there was an agreed arrangement for partition; *there was an agreed arrangement for the partition;* I didn't hear anything about the parties holding separately, but only this statement, and referring me to an agreement on the records of the Mound City Company as to the agreed partition between Phillips and them; never heard of there having been a partition until after this suit was begun; never read the patent; I suppose it was on record.

Question. Didn't you write a letter to Mr. Palomares as president of the bank?

Answer. I told him what the sheep men who had rented from us said; they were complaining of his sheep running on their pasture.

Question. If there was an undivided interest there he had just as much right to the land there on your side?

Answer. No; our lines showed our interest in that land.

Question. You could not give the right to pasture upon any part of the ranch?

165 Answer. Well, can't you agree among yourselves? I never had heard of this partition till after that deed from the Mound City Land and Water Company; after that was the first. I never heard of any partition, only as they stated they had agreed with Phillips. I didn't go to Mr. Phillips to ask anything about the partition. I knew perfectly well that Mr. Phillips was occupying part of the ranch, and that he claimed the right to sell a certain portion of the ranch, and knew he sold to others. I never knew his selling anything on the ranch, except to the Garey outfit.

Question. You knew he was occupying that certain portion of the ranch?

Answer. I didn't know he was on the San Jose ranch, only I heard that San Jose ranch ran all over the country. I knew Spadra was on this ranch. Tonner told me Rubottom there had bought of Phillips. This was before I took the deed, but not before the mortgage was taken. We had a mortgage on this Rubottom place. Judge Widney, our attorney, passed on the title to the Rubottom place before we took the mortgage. In both the mortgages we took from the Daltons and from Wolfskill we took undivided interests in the San Jose, so the mortgages state.

Redirect:

I think on the Dalton part, that they claim he should be
166 limited to, there are 2,000 to 2,500 acres pasture land; the rest of the land is brush, wash, and hills; on the Phillips part there are not more than 1,500 to 2,000 acres pasture land; I know the land—good grain land and good tree land.

HENRY DALTON, called for plaintiff in rebuttal, testified:

I am the person referred to in the United States patents in evidence, and am the person referred to by the various witnesses; I recollect the decree of the United States court that was entered in the San Jose and San Jose Addition.

Question. State the nature of your claim with respect to the lines called O'Farrell lines of partition of the ranchos, and the declarations and assertions made by you with regard to the nature of your claim from the date of the decree of the United States court down to the issuance of the patent, and from the issuance of the patent down. State the manner in which you treated those old lines, so far as the partition of the lands, or occupancy, or anything else is concerned?

Ans. After the decision of the district court we agreed we should hold on the old lines till such time as they were changed, and we did claim from the Government from that time nearly to the present by the O'Farrell survey.

Question. I didn't understand.

Ans. From the time of the decision of the district court we
167 have been claiming our true lines by the O'Farrell survey. We called them our true lines. We have been prosecuting that claim, I, at least, and my associates, till within a short time.

Question. You mean the exterior boundaries?

Answer. The exterior boundary lines of the original grants; I have expended over $20,000 in trying to establish the old lines; that is, the outer boundaries as titled by judicial possession. Of course, Palomares and Vejar have faithfully aided me in that prosecution. The Department have finally insisted on a compliance with the decree of the district court. I subsequently claimed under the law of 1866 all the lands excluded from those surveys as far as my portion is concerned and still have been unsuccessful. During all that interval we have held the property probationally according to the O'Farrell boundaries, until such time as the final separation could take place. I have invariably, where I had opportunity, warned all persons of my rights in the property. I notified Mr. Garey, the man that purchased Pomona property; I notified Mr. Hall; I notified Prager, who had purchased a lot; I explained to him that he could not get a clear title and he refused to take it; I told him I claimed an undivided one-third of the whole tract.

I had a conversation with Tischler, he who bought of Vejar; don't
recollect the year; presume it was after his purchase; he
168 asked me if I had an undivided interest in the land. I told him I had one-third undivided; I explained it to him. He

said he was very sorry that he did not know it before he bought the land. I warned him of the consequences hereafter.

Question. Did you have any conversation with Y. Palomares after the decree?

Ans. He claimed to own all the ranchos entirely; we couldn't have anything to do with him. He proposed to control the decree, assumed the proprietorship, and said I was an intruder. I had some conversation with him about claiming the ranch undivided under that decree, but I don't recollect the conversation. I don't recollect much conversation with Vejar on the subject; he was satisfied with whatever took place.

Ques. Did you have any conversation with him at all?

Ans. I have had, no doubt, because I have explained to them all, you know, we should have our property divided up. I warned them all up to that respect; every conversation referred to that and that only. I warned them all the time—everybody that accepted the patent—and they were trying to sell their land. I told them they could not sell it properly.

Q. Mr. Phillips spoke of your pointing out the old lines of the O'Farrel survey at different times; state for what purpose those lines were pointed out.

169 Ans. I have always pointed them out so as not to encroach on each other until the division took place, so that the boundaries should not be altered. The reason why we occupied the respective portions was because Ricardo Vejar was established at the place called Perew Josa, on the southern part, my predecessor on the western boundary, and the partition was made to include the lands approximating the residences; consequently the addition to San Jose, being all west of the remainder, fell to my portion, with a small part of the San Jose.

Question. After the decree of the United States court did you, Palomares, and Vejar, or their successors, at any time get together and mutually agree that those old lines should be the lines dividing the respective absolute ownerships in fee undivided of the segregated tracts?

Answer. We didn't exactly meet together, but we agreed that way.

Question. Did you understand the last question and the answer?

Answer. I understood the question to be, Had we agreed or disagreed?

Question. State if subsequent to the United States decree in these cases whether you Palomares, and Vejar, or their successors in interest, at any time made a mutual agreement with reference to the occupation or partitioning the present partitioning of the ranch.

170 Answer. When we met we agreed to join and prosecute to our outer boundaries. Goold, the attorney, was engaged with Mr. Palomares to give him a certain portion of the land acquired. Phillips agreed to give a certain sum of money.

[Question.] State what agreement, if any, you made with reference to the interior partition lines of the ranch after the decree of the U. S. district court—whether you made any agreement or not.

Answer. After the decree of district court we made no further

agreement than to respect the boundaries as they stood until they were changed—until they were legally subdivided.

Question. Respecting how or for what purpose?

Answer. Grazing. I forbade them to sell; I would never sell an inch until I could sell it legally; therefore mine is rented. I had to lose it, but it is in there.

Question. To what extent and for what purposes were those lines respected after the decree and patent, giving undivided interests?

Answer. Because we could not help ourselves; we could not get a decision nor anything done; therefore we were obliged to submit to the lines we had.

Question. No; but as between two or three persons?

171 Answer. We agreed to respect those boundaries.

Q. For what purposes?

Ans. For grazing or any other purpose, as regards myself; not for selling, because I never sanctioned any sales.

Question. Now, Mr. Dalton, so far as the absolute title was concerned, to what extent were those interior lines observed under the decree of the court?

Ans. To the same extent as they have been to the present day; each party submitted to the lines.

Question. For what purpose?

Ans. For grazing. Our actions were to obtain the lands, and the Government took off 14,000 acres, more or less, from my portion and Palomares'. I ever claimed a division from the other parties, and we had to do the best till we could get it, and I have been begging and trying to have this partition suit made, and made all efforts in my power; never recognized the partition lines since the decree as absolute, permanent boundary lines. The statements of the witnesses to that effect are untrue. If they said those were permanent lines they were not true; it is falsehood. It was never contemplated on my part. They have admitted it was not so. A large area of lands was excluded by the U. S. survey, which was within the old O'Farrell survey. They belonged to us,

172 but they were made public. The O'Farrell survey made about 30,150 acres and the U. S. patents make 26,000, leaving 8,900 to each party. Some time ago Mr. Philips was renting the lands for shares, and was encroaching beyond the limits belonging to him; then his reason was he didn't know his boundaries, and he introduced—seemed to have a survey made, so as he would know his boundaries; but I don't think that cuts any figure. The character of the lands excluded from my portion under the old partition by the Government were the best lands. The lands they would confine me to in the San Jose Addition and San Jose cannot be irrigated at all, except two or three acres from springs.

Question. State the comparative value, excluding all improvements, of the lands that Phillips now claims, compared with what you have—what they claim you should have.

Objected [to], and because the comparative value when the partition was made is the correct one.

Objection overruled (ruling No. 4.)
Defendant excepts.

Answer. It is worth about three times as much. I take them as a whole—that of Palomares and Phillips; that is, each one of them is worth about 3 times as much as the part they claim I should
173 have. They have got a great many springs and rivulets running about the place. I would value Phillips' land at $30 per acre, excluding improvements; Palomares' the same. The land they would confine me to I would hardly put ten. A small portion of this last is grazing land; say, 2,000 acres good grazing land. The rest of the land is washes of the San Dimas and those hills that rise there; brush and stone is the vegetation on them. The greater part of Phillips' tract is good; I don't know how much is not good. I don't think any portion of the Palomares land is totally bad; about the stag or steer paid us rent. Palomares used to graze all over my place; sometimes he used to give my wife a bullock. I didn't pay any attention to it; I never interfered. My major-domo had a field of wheat, and Palomares' cattle broke down the fence and destroyed considerable, and after a number of declarations he killed a lot of them. Palomares came, and I told him the major-domo ought to have shot him himself, and I told him, You can have the use of the pasture, and I will give you room, but you must send me a choice bullock every week, or I will prosecute you. He finally consented to do so. You can do it every week, and I will allow your neighbors to participate in the pasture. Those are the facts: It was a tax I levied upon them for misconduct. Palomares seems to have a hard memory. He had nothing to do with the San Jose Addition title—Azusa rancho. That was long
174 since the decree of the United States court a few years ago. Mr. Palomares has a very convenient memory, but that is very good; that has nothing to do with this business.

Question. Did Ygnacio Palomares, Ricardo Vejar, or their successors, since the decree or the patent, come to you for the purpose of establishing a final partition of the ranches?

Answer. No; the one time when we ever agreed on prosecuting the outer boundaries—that is the only time we met on the subject, and that was limited to the exterior boundaries.

Cross-examination:

After the patent was issued we made no new agreement at all; we went on and occupied the land the same as we did before; I never ceased saying, begging, and warning; they never agreed to my frequent assertions in any way; they always put me off and came to no determination. After the lands were rejected by the Government I tried to claim to own the excluded lands under the act [of] 1866. I presented a petition to the land office, and claimed, under the act of 1866, to own all that land which had been excluded from the O'Farrell survey and which had been by that survey given to me; I claimed that was an undivided right to me. This was after issu-

ance of patent. Of course I was satisfied with the partition
175 made by Juan Gallardo when the O'Farrell survey partition was made. We were all satisfied at that time.

Counsel for plaintiff objected to the testimony.

The COURT: There is no contest, but that all the parties were satisfied with the O'Farrell survey. There is no dispute on this.

Attorney for defendant said: We want to show that these lands were equally and equitably divided, according to the uses of that period.

Witness resuming: They were not; I accepted the division because I thought it binding under the O'Farrell survey; I was satisfied with it.

Question. You said this old partition was simply for grazing purposes.

Answer. No; defined the property belonged to each party. It was intended at that time to be entirely a final thing between the parties; that was the object.

Question. Looked upon by you all as the final arrangement of your lines?

Answer. We applied for it before the land commissioners individually, and they recognized it as undivided, and the Government regarded it otherwise. Up to the decree of the district court we all looked upon that as the final settlement of the lines.

176 Question. There was never any new or other agreement made afterwards between you three?

Answer. No.

A. F. CORONEL, called for defendants, testified:

I was one of the assistants of Juan Gallardo, who made the partition in 1846 of the San Jose and San Jose Addition. I was on the land at the time; examined it and the lines. We took them on the lands. I know the comparative values of lands as they were estimated in those days. I think the allotments under the O'Farrell partition were equal and just in values.

Cross-examination:

I speak of the whole areas as allotted under that partition. I know the land allotted to Dalton over towards the foot of the mountains. I think they were not the richest of his allotment; the water came down from the mountains during the rains; they were rich in wood and pasture sometimes, but they didn't then serve for agriculture; in those times the value was based on pasturage, not agriculture.

The COURT: According to the usage and custom of the Mexican government, what was the effect on that government of a juridical survey?

Answer The juridical survey was the last act, all parties consenting thereto; the juridical possession was the last act to assure
177 that property; after the government gave the title to any

person juridical possession had to be taken; then afterwards, if it was in common partition, was the last act. Until the juridical possession was given the parties have no right to occupy anything, and until it was measured out finally it was an imperfect grant; when a grant was made within boundaries containing several leagues the officers of the Mexican government had no authority to give possession for over one league; that would not be legal nor bind government; and the titles always contained the words "more or less," which covered a half league or more.

R. M. WIDNEY, called by defendants in rebuttal, testified:

I am the legal advisor of the Los Angeles County Bank, and have been for years past; that abstract to which you refer and which is now before me, which contains the deed from Dalton to Pioche, already read in evidence, I cannot state at what date that was handed to bank; it is dated August 4th, 1876. I believe the first mortgage the bank took was in 1874. The next document of the bank was dated in 1877, and I have no doubt the abstract was furnished me at that time; the abstract then contained, no doubt, this deed to Pioche; well, I presume it was in 1876, because we had quite a number of instruments added; my first knowledge, I think, of the O'Farrell survey was when Dalton and Wolfskill were applying for the first loan; there was then submitted to me an abstract, and I
178 think it had that first document in it. No doubt it referred to some partition. I examined that through, and my recollection is now that I went and enquired of the abstract office if there was any record in this county showing any such partition. I learned there was not. Then, at the same time, I went through the abstract and found the U. S. patent conveying undivided interests, and that the patent recited the old partition of 1846, or rather the old O'Farrell survey, was not there, which was presented to the U. S. land commissioners; also the decree of the U. S. court decreeing upon the issues raised that they held undivided one-thirds; and, upon finding there was no record in Los Angeles county showing that the land had ever been partitioned—only that one reference to it—I wrote the declaration that the title of Dalton was an undivided interest. I advised the bank to take their mortgages. I never said the O'Farrell survey, or the act of juridical possession—I mean the decree of the court of first instance.

Question. You remember Dalton's giving a mortgage to the bank in 1874, October 1st, in which he mortgaged an undivided one-half in San Jose Addition, he having previously conveyed a half interest to Pioche; also an undivided part of the rancho San Jose, amounting to about 1,600 acres; how did you arrive at that?

179 Answer. Let me have the original mortgage and I will show you the addition to it. The mortgages are always drawn in the bank. I furnish my opinion on the abstract. I seldom see the mortgage. The mortgage is in Slauson's handwriting. They sometimes come into my office for review, and in this case I think I added the words "also all the right, title, and interest in the San Jose and Addition." Dalton had actually 2,600 acres set off to him

in the San Jose by the O'Farrell survey; I understood that that quantity would come in.

The mortgage of 1877 describes the premises as the Azusa ranch, the San Jose, and the San Jose Addition, all his right, title, and interest. After making the mortgage to Pioche, Dalton had one-half interest in that portion of the San Jose. My recollection is I examined the mortgage from Dalton to the bank before he executed them, and told Slauson that his interest was undivided, and had that added to the description in the mortgages to the bank from Dalton and Wolfskill.

HENRY DALTON recalled for plaintiff:

That document to Pioche, of date July 13, 1864, in which I go on and state that I am the owner of the Azusa, situated in Los Angeles county, bounded and described according to a map of the same annexed to the testimonial, showing a partition of the place called San Jose between Ygnacio Palomares, Ricardo Vejar, and Henry Dalton, in which reference is made to the old partition map. This
180 was drawn up by Mr. Frankel; he was attorney for us at the time. This document was delivered to Pioche, and I found it after his death in my tin box in their office; that is the only description that we could make at that time that we were entitled to. We had to prosecute one case; the patent had not issued then. We knew then at that time that land I claimed would be excluded from the patent. We had made the surveys. They fought against the surveys, and thus were compelled. Pioche undertook to stop us. He said he would undertake to get the patent according to the true boundaries according to his agreement.

Question. About the time the U. S. patent was being issued for the San Jose did you give notice to Palomares and Vejar, or their successors as to the patent, not to receive it?

Ans. I wrote to them people at all times, even threatened them, because we must have the patent according to our own boundaries, and I wrote to my son not to receive the patent; they did join with me.

Question. What did you in trying to get them to join with you in employing attorneys to secure the lands according to the O'Farrell survey?

Answer. Mr. Robinson came down in behalf of Goold. He and I went over to Palomares' house, and we agreed to give Mr. Goold one-half the land he might acquire outside the Hancock sur-
181 vey. Phillips agreed to give a certain sum of money, and after that Phillips and Palomares accepted the patent against my protest. They said they wanted to sell, and I told them they had better wait. I could not help myself. I was in Mexico when they got the patent. They got the patent as quick as they could. It was not got in 1877. They got it while I was in Mexico, and I came back in 1875.

Plaintiff read in evidence deed from Francisco Palomares to T. Yorba, of date one thousand eight hundred and seventy-nine, in

form of grant, purporting to convey all the right, title, and interest of said Palomares in the Rancho San Jose and every part thereof, excepting a tract of 73 acres conveyed to A. J. Hutchinson; deed from said Yorba to Lugarda A. de Palomares, date 3d of November, 1880, in form of grant, all the right, title, and interest of said Yorba in the Rancho San Jose and every part and parcel thereof, excepting and excluding 700 acres of land belonging to said rancho heretofore sold and conveyed by said Yorba to Concepcion Soto.

Defendants object to the reading of said deed without the deed, excepting a portion thereof is produced.

Objection overruled. (Ruling No. 5.)

Mortgage from Francisco Palomares to the F. and M.
182 Bank, 12th of January, 1878, conveys all the right, title, and interest of said Palomares in the Rancho San Jose, excepting therefrom certain specific parcels.

A mortgage by same to same, 6th February, 1878, remises and releasing his right, title, and interest in the Rancho San Jose, excepting certain specific parcels.

A mortgage by same to L. Longstreet, 19th of March, 1878, grants all the right, title, and interest of said Palomares in the Rancho San Jose. Admitted that the specific parcels mentioned in the foregoing mortgages are within the limits of the Ygnacio Palomares claim.

The foregoing was all the testimony.

The following are copies of notices of intention to move for new trial, with endorsements thereon:

Notice of Intention to Move for a New Trial.

Title court and cause.

Please take notice that defendant, Louis Phillips, intends to move this court to set aside and vacate the decision and judgment heretofore made and entered herein on the 28th day of February, 1882, and to vacate and set aside the findings therein, filed on said day, and to grant a new trial of said cause. Said motion will be made on the following grounds:

183 First. Insufficiency of the evidence to justify the decision and findings of the court, and because the same are against law.

Second. Errors of law occurring at the trial and excepted to by the defendant.

Third. Newly-discovered evidence material for the said defendant, and which he could not have with diligence discovered and produced at the trial.

Said motion will be made upon a statement of the case to be filed and upon affidavits.

THOM & STEPHENS,
F. H. HOWARD,
Attorneys for Defendant, Louis Phillips.

To plaintiffs and R. M. Widney; to defendant, Henry Dalton, and Smith, Brown & Hutton, his attorneys; to defendant, Lugarda A. de Palomares, and Francisco Palomares and Andronica Sepulveda, E. administrator of the estate of Francisco Palomares, deceased, and Chapman & Graves and F. H. Howard, their attorneys.

Received copy of above this 10th day of March, 1882, after filing.

SMITH, BROWN & HUTTON,
Attorneys for Dalton.

R. M. WIDNEY,
Attorney for Plaintiff.

GRAVES & CHAPMAN.

184 But in making this acknowledgment of service we state that we have withdrawn from the case before this service.

G. & C.

F. H. HOWARD,
Attorney for Defendants Francisco Palomares, Lugarda A. de Palomares, and Andronica Sepulveda, E. Adm'r of Francisco Palomares.

Endorsed: Filed March 10th, 1882.

A. W. POTTS, *Clerk*,
By A. RIMPAU, *Deputy.*

Notice of Intention to Move for a New Trial.

Title of court and cause.

Please take notice that the defendants, Lugarda A. de Palomares and A. E. Sepulveda, administrator of the estate of Francisco Palomares, deceased, intend to move the court to set aside and vacate the decision and judgment heretofore made and entered herein on the 28th day of February, 1882, and to vacate and set aside the findings therein filed on said day and to grant a new trial of said cause. Said motion will be made on the following grounds:

1st. Insufficiency of the evidence to justify the decision and findings of the court and because the same are against law.

185 2nd. Errors in law occurring at the trial and excepted to by the defendants.

3d. Newly-discovered evidence material for the said defendants, and which they could not have with diligence discovered and produced at the trial. Said motion will be made upon a statement of the case and upon affidavits.

F. H. HOWARD,
Att'y for Defendants, moving.

To plaintiffs and R. M. Widney, Esq., their attorney; to defendant Henry Dalton and Messrs. Smith, Brown & Hutton, his attorney; to defendant Louis Phillips and Messrs. Thom & Stevens, his attorneys.

Copy of within notice received this 11th day of March, 1882.
R. M. WIDNEY, *Attorney for Plaintiff.*
SMITH, BROWN & HUTTON,
Attorneys for Defendant Dalton.
THOM & STEPHENS,
F. H. HOWARD,
Attorneys for Defendant Phillips.

Endorsed: Filed March 11, 1882.
A. W. POTTS, *Clerk.*
By A. RIMPAU, *Deputy.*

186 *Stipulation.*

Title of court and cause.

It is stipulated in the above-entitled case that there be only one statement on motion for a new trial in the case, and that the statement made on the part of Louis Phillips stand on the statement on the part of the other defendants moving for a new trial.

R. M. WIDNEY,
Attorney for Plaintiffs.
SMITH, BROWN & HUTTON,
Attorneys for Plaintiff Dalton.
F. H. HOWARD,
Attorney for Defendants Lugarda de Palomares, L. A. Sepulveda, Adm'r of Est. of F'co Palomares, Dec'd.
THOM & STEPHENS,
Attorneys for Defendant Louis Phillips.

Filed March 15, 1882.
A. W. POTTS, *Clerk,*
By E. A. OWEN, *Deputy.*

And the time for serving this statement having been duly extended to April the 14th, 1882, the defendant Phillips now moves the court to grant a new trial on the grounds stated in said notice of intention; and the said Phillips hereby specifies the following particular errors occurring at the trial and excepted to by said defendant:

187 First. The court erred in overruling defendants' several objections to the admission of testimony. Said rulings are marked in this statement No-. 1, 2, 4, and 5.

Second. The court erred in overruling defendants' motion to strike out testimony. Said ruling is marked ruling 3.

The defendant Phillips hereby specifies the particulars in which the evidence herein was insufficient to justify the findings and decision of the court, as follows:

The defendant specifies the following particulars in which the evidence is insufficient to sustain the findings and decision:

First Specification.

The evidence is insufficient to sustain the second finding, in this, that it appears from the evidence that the Ranchos San Jose and San Jose Addition were, by the judgment of the court of first instance, city of Los Angeles, duly made and given in 1846, said court having jurisdiction of the subject-matter and parties partitional between Francisco Palomares, Ricardo Vejar, and Henry Dalton, and that they and their successors in interest, including the Mound City Land and Water Association, have ever since said partition held and owned in severalty the respective parcels allotted to them by said partition, and recog-
188 nized the validity thereof, and because it appears from the evidence that neither the Mound City Land and Water Association nor their predecessors in interest have been at any time since said partition an owner of an undivided one-third of said ranchos, or either of them, or of any undivided interest whatever. The evidence is insufficient to sustain that part of said finding wherein the court finds that the patents therein referred to convey an undivided one-third of said ranchos to each Henry Dalton, Ygnacio Palomares, and Ricardo Vejar, because it appears from the evidence that the lands in said patents decribed had been previously partitioned between them, as above set out; and that the patents inured to each of them respectively, conveying the separate parcel which each held in said ranchos under the partition; and because it appears from the evidence that the Mexican grants for said ranchos were perfected by departmental approval and juridical possession, and they were purchased under the Mexican regime. The evidence is insufficient to sustain that part of said findings wherein the court finds that by proper mesne conveyances the Mound City Land and Water Association, Louis Phillips, and Lugarda A. de Palomares have become the owners of said rancho from said patentees; because it appears that prior to said patent said ranchos had been, as
189 above specified, duly partitioned between the then owners, and ever since said partition the parcels so set off in partition have been owned, held, and claimed in severalty by the respective owners thereof; and because it appears that all the parties hereto are estopped by their acts to deny said partition.

The evidence is insufficient to sustain that portion of said finding wherein the court finds that the said association, Louis Phillips, and Lugarda A. de Palomares are tenants in common for the reasons above specified herein.

Second Specification.

The third finding is contrary to the evidence, because it appears that the Los Angeles County Bank has only a mortgage on said partitioned tract, and has no such interest as to entitle it to be plaintiff and because it appears that Henry Dalton has no interest whatever.

Third Specification.

The evidence is insufficient to sustain finding fourth, and the same is contrary to the evidence, because it appears that the owners

of said premises are not now, and have never been since 1846, tenants in common; because it appears from the evidence that said lands were duly partitioned between the parties in 1846, as specified in the first specification herein, and that since said partition
190 all parties interested have at all times recognized the same and claimed thereunder. Said ranchos do not form one body of land, but have been held and owned as distinct parcels ever since said partition.

Fourth Specification.

The evidence is insufficient to sustain the fifth finding, and the same is contrary to the evidence, because it appears from the evidence that both of said grants were final and complete; that the same were duly granted to the grantees; that each of said grants was duly approved by the departmental assembly; that juridical possession was duly delivered of each of said ranchos to the grantees thereof.

That said ranchos were not inchoate grants for lands within larger (not finally located) boundaries, but that said several grants were perfect and complete, and that the title to said tracts of land were completely divested from the Mexican government; that the acts of final survey, segregation, and location were not left to the government of Mexico and the United States, but that the final survey, segregation, and location were all had under the Mexican administration.

Fifth Specification.

The evidence is insufficient to sustain finding six, and the same is contrary to the evidence, because it appears from the evi-
191 dence that said ranchos were, by judgment of the court of first instant of Los Angeles, having jurisdiction thereof, duly partitioned between the then owners in 1846, as alleged in the pleadings of defendant, and as specified in the first specification herein.

Sixth Specification.

The evidence is insufficient to sustain the seventh finding, and the same is contrary to the evidence, because it appears that said Palomares, Vejar, and Dalton did not present their petitions asking a confirmation of a large area of land embracing said ranchos.

On the contrary, it appears from the evidence that each of said parties presented their separate petitions before the board of land commissioners, each claiming therein confirmation of the part allotted to him by said partition of 1846, and within the bounds of the juridicial possession. The evidence is insufficient to sustain that part of said finding seven wherein the court finds that on the appeal of said parties the district court of the United States confirmed to each of said persons an undivided one-third of each of said ranchos, because it appears from the evidence that the board of land commissioners confirmed to said persons separate parcels of said ranchos according to the partition thereof, and that the decision of
192 said commission was duly affirmed on appeal to said court,

and because it appears that such lands had been duly partitioned as specified in the first specification herein prior to the decree.

The evidence is insufficient to sustain that portion of said finding seven wherein the court finds that each of said parties agreed with the attorney of the United States that said decrees should become final.

The evidence is insufficient to sustain that portion of said finding wherein the court finds that said parties and their successors in interest solicited and obtained the United States patent for said ranches. On the contrary, it appears that they sought too btain more land than was included in said patents, and that the same were issued by the Government without any act or solicitation on the part of said Palomares, his successors, or by said Phillips. The evidence is insufficient to sustain that part of said finding wherein the court finds that said defendants and plaintiffs claim title and hold under and by virtue of said decrees and patents, and the same is contrary to the evidence, because it appears that plaintiffs and defendants at all times claimed title and hold under and by virtue of the original Mexican grants and of said partition of 1846, as set out in the first specification herein, and not as tenants in common under said patents.

193 *Seventh Specification.*

The evidence is insufficient to sustain that part of finding eight wherein the court finds that the Mound City Land and Water Association is the successor in interest of said Dalton, because it appears that said Dalton had previously conveyed one-half of his said interest to F. L. A. Pioche.

Eighth Specification.

The evidence is insufficient to sustain that part of finding ninth wherein the court finds that said Phillips acquired said interest of Vejar in said ranchos; and the same is contrary to the evidence, because it appears from the evidence that at the time of said purchase his grantor was claiming that portion of said ranch set off to said Vejar by the partition of 1846, and that said Phillips acquired that portion of said ranchos by said deed.

The evidence is insufficient to sustain that part of said finding ninth wherein the court finds that said Phillips had facilities for the complete examination of the title, and was not misled by any act or declaration of said Dalton, and the same is contrary to the evidence, because it appears from the evidence that said Phillips knew nothing of said title except what he learned from the parties and the map showing a partition of said rancho, and because
194 it appears that he was led to believe by said Dalton by his acts in claiming exclusive possession of the part of said ranchos allotted to him, and by pointing out the division lines to him, said Phillips, according to said partition; that there had been a full and complete partition of said lands, all occurring before his pur-

chase, and that but for said acts of said Dalton said Phillips would have purchased said lands.

The evidence is insufficient to sustain that portion of said finding nine wherein the court finds that said Dalton did not make any declarations or admissions with any intent to deceive said Phillips, or with such carelessness or culpable neglect as to amount to constructive fraud; and the same is contrary to the evidence, because it appears therefrom that, at the time of the purchase by said Phillips, the said Dalton was holding notorious and exclusive and adverse possession of that part of said ranch allotted to him by said partition, and disclaiming all ownership in the part purchased by said Phillips. For the same reasons the evidence is insufficient to sustain that portion of said finding wherein the court finds that said Phillips was not misled or deceived by said Dalton in any matter relating to said title to said premises, and because said Phillips was led by said international conduct of said Dalton to believe that said lands had been partitioned, and because it appears from the evidence
195 that said Dalton was guilty of gross carelessness and culpable neglect in regard to said partition, and because said Dalton was one of the original petitioners for said partition; and the defendants, having acted and bought on the faith of that fact and all his acts with respect thereto, he, the said Dalton, and his purchasers from him and under him, with full notice of defendants' possession, are estopped to deny defendants' title.

The evidence is insufficient to sustain that part of said finding wherein the court finds that said Dalton did not at any time after said decree of said United States court recognize or acquiesce in any partition or partition lines as between the various owners of said property, or do any act as alleged in the pleadings or otherwise, whereby he was estopped from claiming to own an undivided one-third of said ranchos as tenants in common, and the same is contrary to the evidence by reason of the particulars stated in this eighth specification; and further, because he has at all times recognized and accepted said partition, and since the issuance of the patents has jointly with said Phillips and Palomares surveyed out their division lines, and by numerous and divers acts since said decree has recognized the partition as binding and valid, and has so conconducted himself since said decree and patent as to induce the defendants to treat and deal with said lands as partitioned and to change their condition in relation to the same in material respects.

196 *Ninth Specification.*

The evidence is insufficient to sustain the whole of the tenth finding, and the same is contrary to the evidence, because it appears that said Phillips bought from the vendee of Vejar all his right, title, and interest in the San Jose ranch, and because said Vejar and his vendee only owned and claimed a segregated tract in said ranch, and that according to said partition as specified in the first specification herein, and because it appears that at the time of said purchase by said Phillips said Dalton disclaimed all interest in said

ranchos except the portion thereof allotted to him by said partition of 1846.

Tenth Specification.

The evidence is insufficient to sustain the eleventh finding, and the same is contrary to the evidence, because it appears from the evidence that the decree of partition pleaded by defendants did not embrace any land whatever which was public which did not belong to said ranchos, and it appears that the exterior boundaries of said partition were in conformity with the lines of juridical possession; and because it appears that said court of first instance did not attempt to establish the out boundaries of said ranchos and to segregate the same from the public lands of the government of Mexico,
197 because it appears that the same had already been done by the act of juridical possession; and because it appears that said court did not undertake to allot to said Dalton and Palomares 10,000 acres, which were not included in said grant, but it does appear that said court only allotted the land on the exterior boundaries according to the juridical survey thereof.

That part of said finding wherein the court finds that said partition was void, because the grant was not approved by the departmental assembly, is not sustained by the evidence, and is contrary thereto; because it appears from the evidence that both of said grants were approved by the departmental assembly, and because it appears that the same was made on the petition of said Dalton; and it appears from the evidence that said partition was not void, and that the parties thereto and their successors in interest acted at all times upon said partition and recognized the same as valid and binding upon them, and because all concerned are estopped to deny the validity thereof by reason of their acts, and because it appears that the same was made and duly adjudged by a court of competent jurisdiction, having jurisdiction of the parties and subject.

The evidence is insufficient to sustain that part of said finding wherein the court finds that no agreement was made by the
198 parties as to partition, but as a matter of temporary convenience more or less regard was had to the old lines of the purported partition as a mere matter of a temporary use until final confirmation and survey could be had, and the same is contrary to the evidence, because it appears from the evidence that such an agreement for partition did exist, and that partition was duly made as specified in the two first specifications hereof; that the partition was regarded by all concerned as permanent, final, and conclusive, and they all regarded the lines thereof as establishing the boundaries of their several tracts, and because it appears that they did not regard said lines as temporary or as a mere matter of convenience until final confirmation and survey, but as establishing definitely and finally their respective boundaries and title.

That portion of said finding wherein the court finds that the occupation of the said various owners, plaintiff and defendants, has been in subordination to the legal title claiming under said decree of the U. S. district court, and said patent is not sustained by the

evidence, but is contrary thereto, because it appears that the said various owners have at all times claimed to own said lands under and in conformity to the partition made thereof in 1846, and not otherwise.

199 That portion of said finding wherein the court finds that no notice of adverse holding was given is contrary to and not sustained by the evidence, because it appears that the original decree of partition and possession thereunder was such notice, and because the parties interested in said lands have at all times given and acknowledged notice of adverse holding.

That part of said finding wherein the court finds that the action is not barred by section 318 of the Code of Civil Procedure of California is contrary to and not sustained by the evidence, because it appears from the evidence that the defendants and their predecessors have held the several tracts claimed by them under the partition since 1846, according to the lines thereof notoriously, exclusively and adversely to all the world, and especially as against the plaintiffs and their grantors.

Eleventh Specification.

The whole of the twelfth finding is contrary to and not sustained by the evidence, because it appears from the evidence that said owners presented their claims separately before the board of land commissioners, and because on separate appeals to the district court of the United States that court affirmed the decree of the said commission, granting to each of the owners segregated parcels according to the O'Farrell survey of 1846, and because it appears that

200 there was no stipulation other than for segregated parcels in said causes, and because it appears that the owners did not proceed under any decree for an undivided interest, nor do they claim under any such decree or patent.

Said decree is not *res adjudicata* of the tenancy in common in this case, and said finding in that respect is contrary to the evidence, because it appears that each of said owners proceeded separately before the land commission and the district court, and the decrees in said proceedings were had only between the United States and the respective claimants separately, and are in no wise binding upon the others, and because said lands had been duly partitioned before said decree and said court had no jurisdiction to set said partition aside, and because said decree was only effectual or binding in so far as the same established the nature and extent of the original grant by the Mexican government.

Specification Twelve.

The thirteenth finding is contrary to and not supported by the evidence.

Specification.

There is no evidence to sustain the fourteenth finding.

Specification Thirteen.

That portion of finding sixteen wherein the court finds
201 "that, other than as hereinbefore found, there was no judgment, or ownership, or occupation in severalty of any of said lands or any part thereof in favor of Palomares, Vejar, Dalton, or any of their successors in interest" is contrary to and not sustained by the evidence, because it appears in evidence that said Vejar, Dalton, Palomares, and their successors in interest, have at all times since said partition of 1846 held, owned, and occupied in severalty, and not otherwise, the tracts allotted to them, respectively, by the said partition, and because it appears in evidence that said lands were, by the judgment of the court of first instance, duly partitioned in 1846, as specified in the first specification hereof.

That portion of said finding wherein the court finds "that said Mound City Land and Water Association, Lugarda A. de Palomares, have a legal and valid claim and ownership as tenants in common in and to the whole of said ranchos, and every part thereof, and neither said Phillips -or said Palomares own or occupy in severalty any portions of said ranchos," is contrary to and not sustained by the evidence, because it appears from the evidence that said lands were duly partitioned by the court of first instance, as above specified, and that ever since said partition the various parties in interest, including the parties to this suit, have held, owned, and occupied in severalty their respective tracts as allotted by
202 said partition, and as specified in the first specification hereof.

Specification Fourteen.

That part of said finding second wherein the court finds that the Los Angeles County Bank has, as alleged in the complaint, a mortgage on the interest of said Mound City L. & W. Association in said rancho is contrary to and not sustained by the evidence, because it appears, as specified in the first specification herein, that said ranchos have been duly partitioned and said association owned only a segregated parcel thereunder.

THOM & STEPHENS,
F. H. HOWARD,
Attorneys for Defendant Phillips.

Due service of the foregoing statement admitted this April 4th, 1882, reserving all right and objections by reason of the statement not being properly made or served.

R. M. WIDNEY,
Attorney for Plaintiffs Therein.

Due service admitted.

F. H. HOWARD,
Attorney for Lugarda A. de Palomares and A. Sepulveda, Adm'r of F. Palomares.
SMITH, BROWN, & HUTTON,
Attorneys for H. Dalton.
GRAVES & CHAPMAN.

We sign here, but still insist that we are not attorneys for anybody, as we have withdrawn from the case.

203 The foregoing statement and specifications shall stand also for a statement and specifications upon the part of defendants, Lugarda A. de Palomares and A. E. Sepulveda, adm'r of F. Palomares, dec'd.

THOM & STEPHENS,
Attorneys for Phillips.
F. H. HOWARD,
Attorney for Lugarda A. de Palomares and F. Palomares, Adm'r.
R. M. WIDNEY,
Attorney for Plaintiff.

(Subject to same objections as above reserved.)

The foregoing is settled and allowed as a correct statement on motion for a new trial.

August 17th, 1882.

V. E. HOWARD, *Judge.*

Filed August 17, 1882.

A. W. POTTS, *Clerk,*
By A. RIMPAU, *Deputy.*

Filed June 8, 1882.

A. W. POTTS, *Clerk,*
By A. RIMPAU, *Deputy.*

204 *Ruling on Motion for New Trial.*

Title of court and cause.

MONDAY, *August 21st*, 1882.

Motion for new trial denied.

Notice of Appeal.

Title of court and cause.

To the clerk of said superior court and the plaintiffs, and R. M. Widney, Esq., attorney for plaintiff; to defendant Henry Dalton, and Smith, Brown, and Hutton, his attorneys; to defendants Lugarda A. de Palomares and A. E. Sepulveda, adm'r of the estate of Francisco Palomares, deceased, and Chapman & Graves and F. H. Howard, their attorneys:

Please take notice that the defendant, Louis Phillips, in the above-entitled action hereby appeals to the supreme court of the State of California from the interlocutory judgments entered therein on the 14th day of March, 1882, in favor of plaintiffs, and against the defendants in said action, and from the whole thereof. And defendant also appeals from the order of said court entered therein on August 21st, 1882, denying this defendant's motion for a new trial, and from the whole thereof.

August 22d, 1882.

THOM & STEVENS AND
F. H. HOWARD,
Attorney- for Defendant Phillips.

205 Received copy of the foregoing notice of appeal this August 22d, 1882.

R. M. WIDNEY,
Att'y for Plaintiffs.
SMITH, BROWN & HUTTON,
Attorneys for Defendant Henry Dalton.
GRAVES & CHAPMAN,
F. H. HOWARD,
Att'ys for Defendants Lugarda A. de Palomares and A. E. Sepulveda, Administrator of Francisco Palomares, deceased.

We admit service, but we still insist that we are not attorneys for anybody in the case.

GRAVES & CHAPMAN.

Endorsed: Filed August 22d, 1882. A. W. Potts, clerk.

Notice of Appeal.

Title of court and cause.

To the clerk of said superior court, and the plaintiffs, and R. M. Widney, Esq., attorney for plaintiffs; to defendant Henry Dalton, and Smith, Brown & Hutton, his attorneys; to defendant Louis Phillips, and Thom & Stephens, his attorneys:

206 Please take notice that the defendants, Lugarda A. de Palomares and A. E. Sepulveda, administrator of the estate of Francisco Palomares, deceased, in the above-entitled action, hereby appeal to the supreme court of the State of California from the interlocutory judgment entered therein, on the 14th day of March, 1882, in favor of plaintiffs and against the defendants in said action and from the whole thereof.

And defendants also appeal from the order of said court, entered therein on August 21st, 1882, denying the defendants' motion for a new trial and from the whole thereof.

August 23d, 1882.

F. H. HOWARD,
Attorney for Defendant Lugarda A. de Palomares and A. E. Sepulveda, Administrator of Estate of Francisco Palomares, Deceased.

Received copy of the foregoing notice of appeal this August 23d, 1882.

R. M. WIDNEY,
Attorney for Plaintiffs.
SMITH, BROWN & HUTTON,
Att'y for Defendant Henry Dalton.
THOM & STEVENS,
Attorneys for Defendant Phillips.

Filed August 23, 1882.

207 *Clerk's Certificate.*

Title of court and cause.

STATE OF CALIFORNIA, *County of Los Angeles:*

I, A. W. Potts, clerk of the county of Los Angeles and *ex-officio* clerk of the superior court, hereby certify that the foregoing transcript contains a true copy of the original and amended complaints, demurrers, orders overruling demurrers, answers, cross-complaints, and answers thereto, findings, interlocutory judgment, orders made in said cause, statement on motion for new trial, order overruling motion for new trial, and notices of appeal filed therein; and I further certify that an undertaking on appeal in due form has been properly filed.

Witness my hand and the seal of said court this 4th day of Sept., 1882.

[SEAL.] A. W. POTTS,
Co. Cl'k and Ex-officio Clerk of Superior Court.

208 Service accepted by copy this — day of ——, 188–.

——, ——,
Attorneys for ——.

209 *Submission of Cause.*

In the Supreme Court, State of California. In Bank.

THE MOUND CITY LAND AND WATER ASSOCIATION AND LOS ANGELES COUNTY BANK (a Corporation)
vs.
LOUIS PHILLIPS, YUBA FRANCISCO PALOMARES, [and] HENRY DALTON. } 8614.

1882, October 17th.—Cause assigned to court in banc, and to be submitted on briefs to be filed—respondent 30 and appellant 20 days thereafter.

Title of court and cause.

1882, Dec. 15.—Filed appellants' brief and submitted.

Title of court and cause.

1883, March 19th.—Ordered, That submission of this cause be set aside; ordered to Los Angeles calendar for argument to be heard in banc.

Title of court and cause.

1883, April 24th.—Argued and submitted.

210 Title of court and cause.

1884, February 13.—Filed petition for rehearing.
February 28th. Rehearing denied.
By the court.

Title of court and cause.

1885, October 22.—Upon the suggestion of the death of Henry Dalton, defendant herein, it is ordered that Mary G. Z. Dalton, his executrix, be, and is hereby, substituted as defendant herein in place and stead of said decedent.

By the court.

211 *On Appeal from the Superior Court in and for the County of Los Angeles.*

In the Supreme Court of the State of California. In Bank.

THE MOUND CITY LAND AND WATER ASSOCIATION, a Corporation, and Los Angeles County Bank, a Corporation, Respondents,
vs.
LOUIS PHILLIPS, TRINIDAD YORBA, FRANCISO PALOMARES, and HENRY DALTON, Appellants. } No. 8614.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by McKinstry, J.

We concur.

THORNTON, *J.*
McKEE, *J.*
SHARPSTEIN, *J.*

I dissent.

MYRICK, *J.*

Whereupon it is adjudged and decreed by the court that the judgment and order of the superior court in and for the county of Los Angeles in the above-entitled cause be, and the same are hereby, affirmed with costs.

212 *Opinion.*

In the Supreme Court of the State of California. In Bank. (Filed January 29, 1884.)

THE MOUND CITY LAND AND WATER ASSOCIATION and LOS ANGELES COUNTY BANK
vs.
LOUIS PHILLIP *et al.* } No. 8614.

Vejar, Palomares, and Arenas obtained a grant of the "San José" rancho and the "Addition" thereto. Dalton acquired the interest of Arenas.

In 1846 certain proceedings were had before the judge of first instance, which (as claimed by appellant) resulted in a judgment of partition of the lands granted between Vejar, Palomares, and Dalton.

In 1853 Vejar and Dalton presented their petitions to the board of land commissioners for confirmation of the tracts claimed to

have been set aside to them, respectively, by the judgment of partition, and Palomares presented his petition for the confirmation of his claim to an undivided ⅓ part of the "San José" and "Addition." The decree of the district court (on appeal from the commissioners) confirmed to each of the persons named an undivided one-third part of the "San José" and "Addition." The appeal to the Supreme Court of the United States having been dismissed and final survey of the lands made each of the confirmees obtained a patent from the United States for an undivided one-third part of the lands the claims to which were confirmed by the decree. One of the patents was issued in December, 1875; the other January 26, 1875. This action for a partition of the lands described in the patents was commenced January 19, 1880.

It would seem that in the proceeding before him the judge of first instance undertook to perform the task reserved to the political department of the Government, to wit, the task of fixing definitely and finally the boundaries of land granted. He then divided the lands within such boundaries. His attempt to fix for the Government the boundaries of the lands granted gave no additional force to his alleged judgment of partition. If juridical possession had previously been given and its effect was to confine all the rights of the parties within the limits of such juridical possession the judge could not, *pendente lite*, or by his judgment, extend their rights beyond such limits. They were not owners, as tenants in common or otherwise, of any lands finally ascertained to be part of the public domain. If juridical possession had not been given the right of the grantees or their assigns to the temporary possession of all the lands, as the same appeared from the deseño and grant, could not be extended beyond the exterior limits thus appearing.

Even if the survey made under the supervision of the judge of first instance in the partition proceedings can be treated merely as an ascertainment of the exterior boundaries, as the same were laid down on the deseño and described in the grant and petition therefor, the partition of the lands temporarily possessed by the grantees or their assigns—that is to say, of the lands which they had the right to possess in common until the lands granted should be measured by the Government—was operative only until such measurement. A decree of partition does not give a new title to the parties among whom the possession is distributed in severalty. (Wade *vs.* Deray, 50 Cal., 376.) Neither the judge of first instance nor the parties in interest could then know where within the exterior limits the Government would select the specific tract in and to which their complete title would ultimately vest. Until such selection the grantees and their successors in interest retained, as against trespassers, a right to the possession of the whole. (Ferris *vs.* Cooper, 10 Cal., 589.) But this possession they held subject to the power of the Government to segregate a specific tract and thus to deprive them of all right beyond the limits of such tract. Like every other judgment, the judgment of partition (if there was one) was binding and conclusive only with respect to its subject-matter. It was the right to the temporary possession, previously held in common, which was affected

by the judgment. The lands beyond the boundaries which the United States, as successor of Mexico, established continued to be Government property until the boundaries were so established. In the meantime the grantees occupied to the exterior limits by license of the Government—a license which was revoked, as to lands without the final survey, when the final survey was approved. The right of possession was not an equitable right which ripened into a legal title to the same lands upon final measurement. It was continued and limited in time as to the lands which should be excluded by the final measurement. The judgment in partition did not, and could not, anticipate the action of the political power and divide in advance the lands which should subsequently be surveyed. It operated upon the existing status, and gave to each of the parties the right to enjoy in severalty the same temporary possession of all the lands within the exterior limits which they had previously enjoyed in common.

Until final survey by the United States of the "San José" and its "Addition" there was no specific tract to which attached a complete proprietorship in favor of the grantees and those deriving from them. Whatever the nature of the grant or grants, the petitioners to the board of land commissioners submitted themselves to the jurisdiction of the tribunals created by the act of 1851 for the ascertainment of the rights protected by the treaty, and the patent they obtained is a solemn record of an adjudication, binding upon them, that the lands granted were never finally segregated from the body of the public lands by the Mexican government.

It would seem to be sufficiently manifest that the judgment of partition of lands, without the limits of the final survey afterward made, had effect, even as to the parties to it, only while their occupation lasted, with the consent of the government. As the decree did not provide for the separate disposition of the specific portion of the lands, with respect to which the rights of the grantees ultimately became perfect, the decree, as a whole, ceased to operate when the boundaries of such specific portion were determined.

Suppose a decree of partition between tenants in common for a term of years, and, at the expiration of the term, that the lessees should acquire from the lessor the fee to a specific portion of the land demised, would it be said that the decree of partition would estop one of the grantees from claiming an undivided interest in the lands conveyed? Or, take a case more proximately analogous to the one at bar. Two persons asserting an equity in lands agree to a decree of partition. Afterward they secure from the holder of the legal title a conveyance of his title to a portion only of the lands which lies entirely within the limits set apart to one of them by the partition. Does the other get nothing by the conveyance?

Three "grantees" of the former government have, by its permission, the common possession of a tract, with full knowledge — the government may take from them such possession, except in a smaller tract, and confer upon them the full proprietorship of such smaller tract. A decree is entered parting the possession, so that each shall possess exclusively a specific portion of the larger tract. In the

case before us between 600 and 700 acres of the land patented was not partitioned by the judge of first instance, while about 10,000 acres, not embraced within the tract patented, were set apart to the parties by the decree of partition. Not only was the right of estate, which was changed by the judgment from a common to a separate right, different from that asserted by the parties to the present action, but the tract of land which is the subject of the present action is a different tract from that, the common possession of which was made a separate possession by the judgment.

The alleged separate occupation of the respective parties, whether referred to the judgment of partition or to a supposed oral agreement for partition, must, in the absence of evidence to the contrary, be held to have had relation to the temporary possession and right of possession of which we have spoken.

It is well settled, as argued by counsel for appellant, that confirmation and patent, under the act of 1851, only settle the legal title, and that such title inures to the benefit of the parties beneficially interested. But the acceptance of this proposition only brings a return of the question: Had appellant acquired a title, legal or equitable, to a specific portion of the land described in the complaint which he could assert against the copatentee of his grantor? This inquiry we have tried to answer.

The precise question we have been considering has never been determined, but intimations have been made by our predecessors which indicate that they were in accord with the views we have expressed. (See Hathaway *vs.* De Soto, 21 Cal., 191; Mahoney *vs.* Van Winkle, *Id.*, 580; Carpentier *vs.* Thruston, 24 Cal., 268.)

Some of the findings are somewhat informal, but the court passed upon the material issues.

Judgment and order affirmed.

McKINSTRY, *J.*

We concur.

THORNTON, *J.*
McKEE, *J.*
SHARPSTEIN, *J.*

I dissent.

MYRICK, *J.*

213 *Assignment of Errors.*

In the Supreme Court of the United States of America. October Term, in the year of our Lord one thousand eight hundred and eighty-six.

LOUIS PHILLIPS *et al.*, Plaintiffs in Error,
vs.
THE MOUND CITY LAND AND WATER ASSOCIATION, Defendants in Error.

The plaintiffs in error say that in the above record and proceedings there is manifest error in this, to wit:

1st. The complaint fails to show that all the owners of the

214 lands sought to be partitioned are made parties to the suit, but, on the contrary, it affirmatively appears that the interest of Ygnacio Palomares was at the time the suit was brought vested in his heirs, who were not made parties.

It also appears from the findings that numerous owners of the land are not represented in the action, or parties thereto. And it appears also from the statement on motion for new trial that numerous other owners were not made parties, and especially that the title to the undivided one-third of the land in controversy, excepting the portion of the San Jose rancho originally allotted to Vejar, is still vested in the heirs of Vejar, who are not parties to the suit.

And upon the above and each of the above grounds it affirmatively appears that the court had no jurisdiction of the subject-matter of the action, and that its judgment was without jurisdiction and void.

The supreme court of the State of California therefore erred in affirming the judgment.

2d. It appears from the specifications on motion for new trial (which are here referred to and made a part of this assignment of errors) and from the statement that numerous error of law were committed on the trial in the court below; and the supreme court of the State of California therefore erred in affirming the order denying a new trial.

[3d.] It also appears from the said specifications and the statement that the evidence was insufficient to sustain the findings of the
215 court in each of the particulars mentioned in the said specifications; and the supreme court of the State of California also on this ground erred in affirming the order denying a new trial.

4th. More especially, it appears from the facts pleaded and found and from the evidence contained in the statement that the Ranchos San José and San José addition were, by the judgment of the court of the first instance of the pueblo of Los Angeles, duly made and given in the year 1848, the said court having jurisdiction of the subject-matter and parties partitioned between the grantees Palomares, Vejar, and Dalton, and that the said partition was final and conclusive, and that the said parties have ever since held and owned in severalty the respective parcels allotted to them by said partition; and on this ground a new trial should have been granted, and the supreme court of the State of California erred in affirming the order denying the same.

5th. It also appeared from the evidence in said statement that the said partition has ever since been recognized and acquiesced in by the said grantees and their successors in interest, and that the same has thereby become final and conclusive, without regard to its original validity, and a new trial should have been granted on this ground; and the supreme court of the State of California erred in affirming the order denying the same.

216 6th. The evidence is also insufficient to justify the finding that the plaintiffs, Louis Phillips and Lugarda A. de Palomares, are tenants in common of the land described in the complaint. From the evidence it appeared that the said plaintiff

Phillips and the heirs of Ygnacio Palomares were the owners, respectively, of the lands allotted to them or their predecessors in title under the said partition, and that neither of them had any other interest in the said lands; and it also appeared that the allotment of the said Ygnacio Palomares was vested in his heirs, who were not parties to the suit; on this account, therefore, a new trial should have been granted, and the supreme court of the State of California erred in affirming the order denying the same.

7th. The evidence is also insufficient to sustain the fifth finding, but, on the contrary, it appeared therefrom that the San José was a perfect grant, approved by the departmental assembly, and of which the juridical possession had been delivered, and also that the juridical possession of the San José Addition was duly delivered.

8th. The evidence is insufficient to justify the finding that the patent of the United States confirmed to each of the said persons, Dalton, Palomares, and Vejar, an undivided one-third of each of said ranchos; but, on the contrary, it appeared from the evidence that their titles were simply confirmed to them according to their rights,
and that each took thereunder his separate allotment only;
217 and on this ground a new trial should have been granted,
and the supreme court of the State of California erred in affirming the order denying the same.

9th. The supreme court of the State of California erred in holding that the partition of 1846 was not valid and final; also, in holding that the juridical possession of said ranchos had not been delivered; also, in holding that the grants of said ranchos were grants of a quantity of land only within exterior boundaries containing a larger quantity; and especially in holding that at the time of the said partition the boundaries of said ranchos had not been finally settled and segregated; also, in holding that the lands granted and patented did not conform to the lands covered by said partition.

Wherefore the said plaintiffs in error pray that the judgment of the supreme court aforesaid affirming the judgment and order denying a trial of the superior court aforesaid, and the said judgment and order of the superior court aforesaid, may be reversed.

GEORGE H. SMITH,
F. H. HOWARD & J. R. SCOTT,
Attorneys for Plaintiffs in Error.

218 *Bond.*

Know all men by these presents that we, Louis Phillips, as principal, and M. A. Newmark and Kaspare Cohn, as sureties, are held and firmly bound unto the Mound City Land and Water Association, a corporation of the State of California, and the Los Angeles County Bank, a corporation of the same State, and Mary G. Z. Dalton, executrix of the last will of Henry Dalton, deceased, in the just and full sum of two hundred and fifty (250.00) dollars, to be paid to the said obligees, thier certain attorneys, executors, administrators, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of November, one thousand eight hundred and eighty-five (1885).

Whereas lately, at a term of the supreme court of the State of California, held on the 29th day of January, A. D 1884, in a suit depending in said court between the aforesaid two corporations,
plaintiffs, and the said Louis Phillips, Lugarda A. de Palo-
219 mares, A. E. Sepulveda, administrator of the estate of Francisco Palomares, deceased, impleaded with Henry Dalton, defendants, judgment was rendered against the said defendants, Louis Phillips, Lugarda A. de Palomares, and A. E. Sepulveda, administrator as aforesaid; and the said three defendants last aforesaid *and the said three defendants last aforesaid* having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the said judgment in the aforesaid suit, and a citation directed to the said plaintiffs in said suit and Mary G. Z. Dalton, the executrix of the last will of the said Henry Dalton, now deceased, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next (A. D. 1886):

Now the condition of the above obligation is such that if the said plaintiffs in error shall prosecute the said writ of error to effect and
answer all damages and costs if they fail to make their plea
220 good, then the above obligation to be void; else to remain in full force and virtue.

LOUIS PHILLIPS. [SEAL.]
M. A. NEWMARK. [SEAL.]
KASPARE COHN. [SEAL.]

Signed and sealed in the presence of—
RICH. ALTUHUT.

Approved Nov. 28, 1885.

R. F. MORRISON,
Chief Justice of Cala.

Delivered to Glassell, Smith & Patton by the undersigned in escrow, to be delivered by them, or either of them, as our bond, on the date therein named, or any other date subsequent to the issue of the writ of error therein referred to.

LOUIS PHILLIPS.
M. A. NEWMARK.
KASPARE COHN.

Witness:
RICH. ALTUHUT.

Endorsed: Filed November 28th, 1885. J. W. McCarthy, clerk, pr. J. S. Williams, deputy.

221 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

To the Mound City Land and Water Association, a corporation of the State of California, and the Los Angeles County Bank, a corporation of the same State, and to Mary G. Z. Dalton, executrix of the last will of Henry Dalton, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Louis Phillips, Lugardo A. de Palomares, and A. E. Sepulveda, administrator of the estate of Francisco Palomares, deceased, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert F. Morrison, chief justice of the supreme court of the State of California, this 28th day of November, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal Supreme Court of California.]

R. F. MORRISON,
Chief Justice of Cal.

222 Due service of the within citation is admitted, and the receipt of a copy thereof, this second day of December, A. D. 1885.

SMITH, BROWN & HUTTON,
Att'ys for Maria G. Z. de Dalton, Executrix of Estate of Henry Dalton, dec'd.

P. M. WIDNEY,
Attorney for the Mound City Land & Water Association and The Los Angeles County Bank, Defendants in Error.

223 [Endorsed:] No. 8614. In the Supreme Court of the United States. Louis Phillips *et al.*, plaintiffs in error, *vs.* Mound City Land & Water Association *et al.*, defendants in error. Citation. Filed December 15, '85. J. W. McCarthy, clerk, per J. S. Williams, deputy.

224 *Petition for Writ.*

In the Supreme Court of the State of California.

Mound City Land and Water Association, a Corporation, and Los Angeles County Bank, a Corporation, Plaintiffs and Respondents,

vs.

Louis Phillips, Lugarda A. de Palomares, A. E. Sepulveda, Administrator of the Estate of Francisco Palomares, Deceased, and Maria G. Z. Dalton, Executrix of Henry Dalton, Deceased, Defendants and Appellants.

To the Hon. R. F. Morrison, chief justice of the supreme court of the State of California:

Your petitioners respectfully represent that on the 29th day of January, 1884, a final judgment was made and entered by
225 this court in the above-entitled case then pending on appeal

therein; that the action involves the titles of your petitioners, Lugarda A. de Palomares and Louis Phillips, to tracts of land owned and claimed by them respectively in the Rancho San Jose, situate in the county of Los Angeles, a confirmed and patented Mexican grant; that the titles of your said petitioners were derived by proper mesne conveyances from the original grantees and confirmees of said rancho, and they claimed and claim to be the owners thereof, and to have a right and title thereto under and by virtue of the treaty of the United States Government with the Republic of Mexico, commonly known as the treaty of Guadalupe Hidalgo, and the act of Congress of March 3rd, 1851, for the purpose of ascertaining and settling private land claims in the State of California, and the several acts amendatory thereof and supplementary thereto and under the commissions held and authority exercised thereunder, and that the decision of the lower court and of this court in the judgment above referred to was against the said title and right of your
226 said petitioners. Your petitioners further represent that the said judgment was erroneous *in thus deciding*, and that the case comes within the appellate jurisdiction of the Supreme Court of the United States, all of which will more fully appear by reference to the record of said case and the copy thereof herewith presented.

Wherefore your petitioners pray for the allowance of a writ of error from the said supreme court to this court, and for such other process as will enable your petitioners to obtain a review of the case and a correction by the said Supreme Court of the United States of the alleged errors; and your petitioners will ever pray, &c.

LUGARDA A. DE PALOMARES,
A. E. SEPULVEDA,
Administrator of the Estate of Francisco Palomares, Deceased,
AND LOUIS PHILLIPS,
Plaintiffs in Error.
By F. H. HOWARD AND
GEORGE H. SMITH,
Their Attorneys.

Endorsed: Filed November 28th, 1885. J. W. McCarthy, clerk, per I. S. Williams, deputy.

227 *Allowance of Writ.*

In the Supreme Court of the State of California.

MOUND CITY LAND AND WATER ASSOCIATION, a Corporation, and Los Angeles County Bank, a Corporation, Plaintiffs and Respondents,

vs.

LOUIS PHILLIPS, LUGARDA A. DE PALOMARES, A. E. SEPULVEDA, Administrator of the Estate of Francisco Palomares, Deceased, and Maria G. Z. Dalton, Executrix of Henry Dalton, Deceased, Defendants and Appellants.

Upon reading the petition of the said Louis Phillips, Lugarda A. de Palomares, and Andronico Sepulveda, administrator of the estate of

Francisco Palomares, deceased, praying for the allowance of a writ of error from the Supreme Court of the United States to review the judgment of this court heretofore entered in this case, to wit, on the 29th day of January, A. D. 1884, and it appearing from the
228 said petition and the record of the case that a proper case for the allowance of said writ is presented, it is ordered that the same be allowed.

R. F. MORRISON,
Chief Justice of Cal.

Endorsed: Filed November 28th, 1885. J. W. McCarthy, clerk, per J. S. Williams, deputy.

229 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of California, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Mound City Land and Water Association, a corporation of the said State, and the Los Angeles County Bank, a corporation of the same State, plaintiffs, and Louis Phillips, Lugarda A. de Palomares, A. E. Sepulveda, administrator of the estate of Francisco Polomares, deceased, and Mary G. Z. Dalton, executrix of the last will of Henry Dalton, deceased, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in
230 question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, and wherein especially was drawn in question a title and right claimed by the said Louis Phillips and Lugarda A. de Palomares, under a treaty and under statutes of, and under commissions held and authority exercised under, the United States, and the decision was against the title and right specially set up and claimed by the said defendants under said treaty, statutes, commissions, and authority, a manifest error hath happened, to the great damage of the said Louis Phillips, Lugarda A. Palomares, and A. E. Sepulveda, administrator as aforesaid, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment

be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause
231 further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 27th day of November, in the year of our Lord one thousand eight hundred and eighty-five (1885).

[The Seal of the Circuit Court, District of Cala.]

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the District of California.

Allowed by—
R. F. MORRISON,
Chief Justice of Cal.

232 [Endorsed:] 8614. In the Supreme Court of the United States of America. Louis Phillips *et al.*, plaintiffs in error, *vs.* Mound City Land & Water Association *et al.*, defendants in error. Writ of error. Filed November 28, '85. J. W. McCarthy, clerk, per J. S. Williams, deputy.

233 *Clerk's Certificate.*

In the Supreme Court of the State of California.

THE MOUND CITY LAND AND WATER ASSOCIATION, a Corporation, and Los Angeles County Bank, a Corporation, Defendants in Error,

v.

LOUIS PHILLIPS, LUGARDA A. DE PALOMARES, A. E. SEPULVEDA, Administrator of the Estate of Francisco Palomares, Deceased, and Maria G. Z. Dalton, Executrix of the Estate of Henry Dalton, Deceased, Plaintiffs in Error.

I, J. W. McCarthy, clerk of the supreme court of the State of California, do hereby certify the foregoing two hundred and nineteen pages, numbered from four to two hundred and nineteen, both numbers inclusive, contain a full, true, and correct transcript of the proceedings in the cause above entitled, and that the same
234 together constitute the return to the annexed writ of error.

Witness my hand and the seal of the said supreme court this 15th day of December, A. D. 1885.

[Seal Supreme Court of California.]

J. W. McCARTHY, *Clerk*,
Per J. S. WILLIAMS, *Deputy*.

124-605
124-605

Office Supreme Court U. S.
FILED
JAN 3 1888
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

No. 490.

LOUIS PHILLIPS ET AL.,

vs.

THE MOUND CITY LAND & WATER ASSOCIATION ET AL.

In Error to the Supreme Court of the State of California.

Statement of the Case.

The suit in the lower Court was an action brought for the partition of two adjacent tracts of land in the county of Los Angeles, known respectively as the ranchos San José and San José Addition.

The former ranch was granted on the 15th day of April, 1837, to Ygnacio Palomares and Ricardo Vejar; and the grant approved by the Departmental Assembly on the 19th day of the same month (folios 90–1, 100–2). The juridical possession was duly delivered on the third day of August, 1837 (folios 94–96).

In the year 1839, one Luis Arenas presented a petition to the Governor stating in effect that upon the recommendation of the Governor he had been associated by Palomares and Vejar in the ownership of the rancho San José, and that the Governor at the same time had prom-

ised to grant to the three an additional league of land (fols. 102–4); and upon a reference of the petition to Palomares and Vejar, a statement was endorsed upon it by them to the same effect (fol. 104). The petition prayed only for the additional league promised (fol. 103).

The order for the grant endorsed upon the *expediente* (fol. 102), and the grant itself (fol. 111), after reciting that the San José had been granted in 1837 to Palomares and Vejar, declares them and Arenas to be the owners of the San José, with the addition of one league. (*Sitio de ganado mayor.*)

Juridical possession of the new grant was duly given on the 7th day of May, 1840. (fols. 114–8.)

There was also granted to Arenas in 1841 the rancho Azusa, adjoining the addition to the San José (fol. 119), but this is not involved in the present suit.

Prior to the year 1845 one Henry Dalton succeeded to the title of Arenas in the three ranchos; and on the 16th day of November of that year he and Vejar presented their petition to the first alcalde and judge of first instance praying for a partition of the land owned by them jointly with Palomares. Due proceedings were had upon this petition, which resulted, upon the 12th day of February, 1846, in a final partition of the two ranchos between the parties interested. (fol. 132.)

The survey for the partition was made by Jasper O'Farrell, whose map is the map referred to in the subsequent proceedings for confirmation.

After the organization of the land commission petitions were filed by the three owners for the confirmation of their respective claims.

The petitions of Dalton and Vejar, in effect, asked for the confirmation of the specific tracts allotted to them on the partition. (fols. 62 *et seq.* and 72 *et seq.*)

The petition of Palomares asked for the confirmation of an undivided third of the Rancho San José, with the Addition. (fol. 67 *et seq.*)

The decrees of the Land Commission confirmed to each respectively the lands allotted to them on the partition as described on the O'Farrell map. (fols. 63–4, 69, 70, 73–5.)

On appeal to the District Court in Dalton's case, it was adjudged: "That the said decision of the said Board of Commissioners be, and the same hereby is, affirmed; and it is further adjudged and decreed that the claim of the above-named appellee is good and valid, and the same is hereby confirmed to him; the land of which confirmation is made being as follows: One equal undivided third part of the lands of San José granted by Juan B. Alvarado, Governor of California, to Ygnacio Palomares and Ricardo Vejar, on the 15th day of April, 1837, and regranted by said Governor, Juan B. Alvarado, on the 14th day of March, 1840, to the said Palomares and Vejar, and to Luis Arenas, according to the boundaries described in the grant first mentioned, and the map to which the same refers, which boundaries more fully appear from the Act of Juridical Possession as follows: (Here follows the description given in the *testimonio* of juridical possession); also one undivided third part of the lands granted to Ygnacio Palomares, Ricardo Vejar, and Luis Arenas, in addition to the lands above described by Juan B. Alvarado, Governor of the Department of the Californias, according to the boundaries described in said grant and the map to which the grant refers, to the extent of one square league of land within the boundaries given in the Act of Juridical Possession, as follows, to wit:" (Here follows the boundaries given in the *testimonio* of juridical possession). (fols. 65–6.)

The decrees of the District Court in Palomares' case and Vejar's case were identical in substance and almost identical in language. (fols. 70–1, 75–6.)

A single patent was issued to the three confirmees for the San José rancho (folios 60–81), and another for the addition to San José (folios 81–82); both of which recite the above decrees at length.

The Mound City Land and Water Company, plaintiff in the original suit, is the successor in the title of Dalton.

The defendants, Palomares and Phillips, have respectively succeeded to the titles of Ygnacio Palomares and Vejar in the rancho San José, but have never acquired their titles in the rancho San José Addition, which are still vested in their heirs, who are not parties to the suit.

The decree of the Court below annulled the former partition and adjudged the three parties named to be the owners as tenants in common of the two ranchos; and this decree was affirmed by the Supreme Court of California.

The Case of the Plaintiff in Error.

The case of the plaintiff in error rests upon the following propositions:

1st. The partition made by the Mexican authorities in 1846 was valid, and vested in the parties interested the title to the specific tracts respectively allotted to them.

2d. These titles were confirmed by the treaty, by the act of March 3d, 1851, and by the decrees of confirmation and the patents issued under that act.

3d. Consequently the case comes within the provision of section 709 of the Revised Statutes, that "A final judgment or decree in any suit in the highest Court of a State in which a decision in the suit could be had, * * where any right, title, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised, under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed in the Supreme Court upon a writ of error;" and also under the provisions of section 2, article III of the Constitution, that "the judicial

power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Assignments of Error.

I.

It was error in the Supreme Court of California to hold that the decree of the partition was not completely valid and binding between the parties to it and their successors in the title.

II.

It was error in the Supreme Court of California to hold that the decree of partition was invalid *in toto* because in some respects it included lands not granted, and at most in not holding that the partition decree was good in respect of all the lands actually granted, leaving it to a Court of equity to make such compensation between the respective parties as might be necessary and turn out to be lawful, (if any,) as should be proper in respect of the lands assigned to one or the other of the parties in the decree of partition, which did not belong to either of them under the original grants.

III.

It was error in the Supreme Court of California, on the case, as presented, not to dismiss the present application for repartition.

The findings of the trial Court in respect of the question now before this Court, and numbered 4th, 5th, 6th, and

7th (Rec., p. 22), although they are stated in the outset to be findings of fact, are merely conclusions of law based upon the undisputed documentary evidence submitted to the Court and appearing in the case made up for the trial of the cause in the Supreme Court of California, and commencing on page 27 of the record, and comprising, in respect of the questions before this Court, all the evidence given at the trial. (See Record, folio 182.)

And the Supreme Court of California so treated them in its decision of the case—Judges Thornton, McKee, and Sharpstein concurring in affirming the judgment of the lower Court, Myrick dissenting, and Ross not sitting.

Points.

I.

It is submitted that the case should be considered precisely as it should and would have been by a Mexican judicial tribunal, had the property remained within the jurisdiction of Mexico.

According to the principles of international law and the requirements of the treaty of cession, it seems clear that every right, as it existed at the date of cession, must be respected and protected by the judicial authority of the United States. Assuming, as we justly may, that the jurisprudence of Mexico was conducted upon the same principles as the jurisprudence of any State in the Union, it is submitted that had the case occurred in any one of the States of the Union, it must have been held that the decree of a court having jurisdiction of the partition suit, however mistaken or erroneous it may have been in re-

spect of the ownership of the parties to it in whole and every part of the lands partitioned, would be, unless reviewed on a proper bill in the very same suit, absolutely final and conclusive, and that the accident of its turning out that there was a want of title in all parties to some part of the divided lands, could not authorize any of the parties to bring a new suit for a repartition, whatever might be the case on a suit in the nature of a bill in equity to rectify, so far as should be necessary, and no further, the mistake by which one of the parties in an original partition suit had been decreed lands which he could not hold as against an adverse claimant, and another had been decreed lands which he could hold as against such adverse claimants, or to obtain equitable compensation.

This point may be well illustrated by supposing that this Court on a proper appeal in an equity cause for a partion of lands in Illinois had made precisely the final decree that the Mexican Court did, and that it should afterwards have turned out that some part of the lands embraced in the separate assignment to one of the parties, turned out to be the property of a third person not a party to the suit. In such a case it is submitted that it is impossible to conceive that that this Court could disregard its former decree on a new and independent suit for partition upon any such ground. This would be a collateral impeachment of a final decree of a Court having jurisdiction of the subject-matter and of the parties, upon the simple and mere ground that such decree had been followed by a misfortune to one of the parties to it. It is submitted that no such declaration of law as is asked for here has ever been made by any Court of justice, and especially where a long possession had followed the original decree.

It is a fallacy to assert, as the Supreme Court of California did, that the circumstance that some part of the lands partitioned were public lands and not the subject of private ownership, put the case in the attitude that it might

have occupied had all the original grantees been mere squatters, without any right or title whatever to any part of the lands they were occupying in common, and had obtained a judicial partition of their purely squatter interests, and afterward each had obtained a Government grant of an undivided portion of the property. In that case, the first and original title would have been acquired by the last grant of the Government, and the old decree of partition, it might be plausibly claimed, perhaps, would be superseded just as it would have been ineffectual had the last grant by the Government been made, as it legally might have been, to entirely different persons. But even this is far from clear, for the grant in such case might have been made to one only of the three parties to the partition, of his own possession alone. If they had no rights before the patent, as is contended by the defendant in error, then there was no equity to be enforced afterwards. If there were rights as between themselves, then the judgment of the Mexican Court fixed them conclusively, and the subsequent failure of the title of one was simply a misfortune that the law cannot in a case constituted like this (if it could in any case) cure. This was a case instituted for partition pure and simple, and not to reform an erroneous decree or to obtain any equitable relief. (Record, p. 1.)

But here there were originally valid and subsisting grants of lands which gave to the grantees a perfect title. These grants, though occupied in common, created separate interests; and in a suit for partition it happened that there was included in the separate divisions, some land to which neither of them had any title. The decree of partition, it might perhaps be claimed, was therefore erroneous or unjust in respect of the particular partitionee who had assigned to him a portion of his share, something to which none of them had any right, and that another had too much decreed to him. This has been the case, either in quantity or value, in nine-tenths of all partition cases in

the Courts, if we are to take the opinion either of one of the parties to them, or of a Court to whom the question should be submitted thirty (or even five) years afterwards. But this could be no ground for holding that therefore the decree was void or could be set aside otherwise than by a suit brought promptly to correct the supposed injustice. (See McCall *v.* Carpenter, 18 How., 297, and cases cited; Parker *v.* Kane, 22 How., 1; Gay *v.* Parpart, 106 U. S., 679.)

The original grant itself, it is repeated, was perfect and complete, with definite and described boundaries, and it could not be overthrown, or held to be floating, from the circumstance that in the partition proceedings some other land, not granted by the Mexican Government, had been included.

But suppose the grants were inchoate and floats within the outbounds, each grantee had rights that, as to the others, were just as perfect as if the title had been complete. They were tenants in common of what they all possessed under the Mexican grants. They could deal with each other in regard to the property as they pleased. Each could sell to the other by a final and valid deed. They could divide the property by mutual and valid releases, by metes and bounds, that no Court could disturb on the ground that their titles were inchoate, and could only disturb on the same grounds as in cases of perfect titles. This, it is thought, is too plain for argument. Could they not, then, in case of disagreement, resort to a judicial tribunal to judge between them and to decree a partition that would, as between themselves, be final and conclusive, whatever might happen afterwards? Is it not plain, then, that the decree of partition can only be assailed by establishing the proposition that the Mexican Court could have jurisdiction only of a partition suit in respect of lands to which, and all of which, the parties had a perfect title, and of none other, and that if, after a judicial partition, the title to any part of the land

failed, the whole proceeding was void? It is believed that no writer, and no case before this one, has ever suggested such a state of the law.

It is true that the California Land Commission confirmed these Mexican titles in undivided shares, but that was a matter purely between the United States and the claimants, and could have no effect upon the rights of the respective grantees as between themselves, for the 15th section of the act of 3d March, 1851, provided in express terms "that the final decrees rendered by the State Commissioners, or by the District or Circuit Court of the United States, or any patent to be issued under this act, should be *conclusive between the United States and said claimants* ONLY, *and shall not effect the interests of third persons.*" The clear and evident meaning of this provision was and is that it was not within the competence of the board, or of any tribunal acting under the act of 1851, to disturb any right or settle any question as between the respective persons who might be claimants before it, but only to determine finally either that the land was a part of the public domain, or that it was not, and that it belonged to the claimants or others, according to their respective rights as they had existed before the cession.

The whole tenor of the act of March 3, 1851, (9th Stats., p. 631,) shows this, and in section 13 is the only and exclusive provision touching the decision of contested titles between anybody. That section provides for proceedings after confirmation, and allows an adverse claimant, if he chooses to do so, to suspend the issuing of a patent, or finally enjoin, if the case shall warrant it, and that is all. Then follows the 15th section, before cited, which expressly excludes all consequences of a confirmation, except as between the United States and the claimants. So that a failure of any adverse claimant to proceed under section 13 would not prejudice his right. The District Court, there-

fore, as a Court of confirmation, had no jurisdictional power to pass on the respective interests and rights of the parties in whose favor confirmation was made as between themselves.

In respect of the motion to dismiss for want of jurisdiction, I renew the points suggested at the October Term, 1886, and also submit that there were drawn in question a right and title, secured by the treaty of cession, and that it is not a case of conflicting titles or claimants derived under any grant or authority of the United States, but is solely and purely a right and title derived from the Government of Mexico, as established and made perfect by the action of its own judicial tribunals before the cession. The case, therefore, is not like any of those cited by the counsel on the other side. The defence in the Court below rested, not upon any title derived from the United States, or upon the effect of any action under United States authority, but exactly the opposite. The complainant below rested fundamentally upon assailing the decree of the Mexican tribunal, which the treaty in effect engaged should be respected. If this does not make a case for the jurisdiction of the National Courts, it is difficult to see what could. This is perfectly illustrated and enforced by the statement of Mr. Chief-Justice Tanney in the case of Maney *v.* Porter, 4 How., 55, where he states the very distinction above insisted upon, and dismissed the case upon the ground that the suit was not brought to uphold any title or right which the complainant claimed under the Choctaw treaty. Here the defence was rested upon the very title and right which the treaty with Mexico undertook to protect, viz., that which

was acquired and established through the decree of the Mexican Court, which the complainant in this case below undertook to overthrow.

In the case of New Orleans *v.* Armas, 9 Pet., 223, this Court, by Marshall, Chief Justice, laid down the proposition upon which we stand, saying, speaking of the Constitution and the judiciary act, "the language of both instruments extends the jurisdiction of this Court to rights protected by the Constitution, treaties, or laws of the United States from whatever source those rights may spring." In that case the decision of the Court below was adverse to the title claimed by the city and in favor of the title claimed under the Spanish Government, and so the Court held that the claim of the city did not arise and was not affected by the treaty of cession. In one of the earliest of this class of cases, Owings *v.* Norwood, 5 Cranch, 344,—in that case Chief Justice Marshall said:

"Whenever a right grows out of or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the States; and, whoever may have this right, it is to be protected. But if the person's title is not affected by the treaty, if he claims nothing under a treaty, his title cannot be protected by a treaty. If Scarth or his heirs had claimed, it would have been a case arising under a treaty."

In this case the successor in title to one of the original Mexican grantees and parties to the Mexican partition suit *does* claim and stands on the title that, by the judicial decree of the Mexican Court, had been confirmed in severalty to him.

It is further submitted as historically and philosophically correct that the Courts of the United States may take judicial notice of the laws in force in the territory acquired by cession from Mexico as they existed at the time of the cession, and that what those laws were is not a matter, as it is technically called, of foreign law, to be proved by expert witnesses. This view is believed to be

in accordance with the long practice of this Court, although strangely enough, in a recent case in the House of Lords, witnesses were examined as in the case of proving purely foreign law, to show what was the law in the Province of New York while it was a dependency of the British King.

In further support of the views I have stated, I beg leave to reprint, in connection herewith, the learned argument of Mr. George H. Smith, submitted to the Court on motion to dismiss.

GEO. F. EDMUNDS,
Of Counsel for Plaintiff in Error.

Argument of Mr. George H. Smith.

I.

AS TO THE VALIDITY OF THE PARTITION OF 1846.

The proceeding for partition was commenced by Dalton and Vejar in 1845, before Sanchez, first alcalde and judge of the first instance, and was continued and concluded in the following year before his successor, Gallardo (fols. 123 *et seq.*). Notice was duly given to Palomares, and to the *Colindantes* (fols. 124, 126); a regular surveyor, selected by the parties, was employed (fols. 126–7), and he and the chain-bearers duly sworn; and, in fine, the proceedings appear to have been regular in every particular.

The court of first instance was a court of general jurisdiction (Escriche—Mexican edition—word "Jusgado"); and (with certain exceptions, immaterial to the present case) was vested, by express provision of the law, with jurisdiction of "all suits and causes, civil or criminal, of

whatever class or nature they may be," (*Id.*, word "Juez Civil," citing art. 88 of "the law of the 23d of May, 1837, upon the administration of justice"), and consequently with jurisdiction of actions for partition, which were recognized actions under the Mexican law (*Id.*, words "Particion," "Juicio Divisorio," "Communero").

The case, therefore, not only comes within the presumption "that the public acts of public officers purporting to be exercised in an official capacity and by public authority, shall not be presumed to be an usurped, but a legitimate authority, previously given or subsequently ratified" (U. S. *v.* Arredondo, 6 Peters, 727; U. S. *v.* Delassus, 9 *id.*, 134; Strother *v.* Lucas, 12 *id.*, 410; U. S. *v.* Peralta, 19 How., 347); but also within the universal principle that where power or jurisdiction is delegated to any officer or tribunal over a subject-matter, the acts of such officer or tribunal are binding and valid, and cannot be attacked collaterally. (U. S. *v.* Arredondo, 6 Pet., 729).

The objections made to the partition by the Supreme Court of California are, we respectfully submit, obviously untenable. Its decision, if we understand it correctly, rests upon the proposition "that in the proceeding before him (for the partition) the judge of first instance undertook to perform the task reserved to the political department of the Government, to wit, the task of fixing definitely and finally the boundaries of the land granted," and that "neither [he] nor the parties in interest could then know where, within the exterior limits, the Government would select the specific tract in and to which their complete title would ultimately vest." (64 Cal., 494, 495.)

It would seem to be a sufficient answer to this proposition to say that it is, in fact, untrue. For, in the first place, the political department, upon the issue of the grants, did not reserve to itself the task of fixing definitely and finally the boundaries of the land granted, but by express provisions in the grants delegated this task to the proper judge, and directed the parties to apply to him for the delivery of the

juridical possession, (fols. 90, 112, 113 *et seq.;*) and in the second place the juridical possession of both grants was in fact delivered before the proceedings for partition commenced, as fully appears from the records of the delivery of such possession appearing in the Transcript, (fols. 92 *et seq.*, 114 *et seq.*) The power to segregate the land, and to define and establish the boundaries had, therefore, become a judicial power, and had been exercised before the partition, and the boundaries established by the proper judicial proceeding, viz., the delivery of the juridical possession.

"By this proceeding the land granted was separated from the public domain, and what was previously a grant of quantity became a grant of a specific tract." (Graham *v.* U. S., 4 Wall., 261.)

"This proceeding involved an ascertainment and settlement of the boundaries of the land granted by the appropriate officers of the Government, specially designated for that purpose, and has all the force and efficacy of a judicial determination. It bound the former Government, and is equally binding upon the officers of our Government. Such is the purport in the recent case of Graham *v.* United States. In that case the survey made by the Surveyor General of the grant confirmed did not conform to the measurement of the land as shown by the record of juridical possession, and the District Court for that reason set the survey aside and ordered a new survey, which should correspond with the measurement, holding that the action of the officers of the former Government, upon the delivery of juridical possession, furnished insuperable objections to any other course. In affirming this decision this Court expressed its concurrence with the views of the District Court, and held that a proceeding of that character must control the officers of the United States in the survey of land claimed under a confirmed Mexican grant. In other words, the case decided that the juridical possession was conclusive as to the boundaries and extent of the land granted."

United States *v.* Pico, 5 Wall., 539.
See also Leese *v.* Clark, 18 Cal., 574.
Waterman *v.* Smith, 13 Id., 410–11.
Thornton *v.* Greer, 26 Id., 628.

The California Court, however, held it altogether immaterial whether there had, or had not, been a delivery of juridical possession prior to the partition; and rested its decision exclusively upon the broad proposition that "whatever the nature of the grant or grants, the petitioners to the Board of Land Commissioners submitted themselves to the jurisdiction of the tribunals created by the act of 1851 for the ascertainment of the rights protected by the treaty; and the patent they obtained *is a solemn record of an adjudication, binding upon them; that the lands granted were never finally segregated from the public lands by the Mexican Government.*" Hence, the conclusion reached is that "until final survey *by the United States* of the 'San José' and its 'Addition,' there was no specific tract to which attached a complete proprietorship in favor of the grantees," or which could be the subject of a partition. (Id., 496–7.)

The decision, therefore, seems to go to the full extent of holding that all partitions of Mexican grants made by the Mexican Courts—whether the grants were perfect or imperfect, whether for specific tracts or for quantity only, or whether defined by delivery of juridical possession or otherwise—were necessarily void; and the reason given by the Court for its conclusion, viz., "that the judgment in partition * * * could not anticipate the action of the political power, (*i. e.*, of the United States,) and divide in advance the lands which should subsequently be surveyed" (opinion, p. 495), is equally applicable to all such cases.

This conclusion, however, rests upon a misapprehension of the nature and effect of the proceedings for confirmation under the act of 1851. Rights of property acquired under the Mexican laws were not affected by the conquest, and our Government never had or claimed any right, either wholly to confiscate such property, or do so partially by altering boundaries established and defined under the Mexican law. It had, indeed, the power to establish the boundaries of a grant where the juridical possession had not

been delivered; for under the Mexican law, and the express terms of all grants, this was the only way in which such boundaries could be established; and until thus defined, all grants were, in general, grants of quantity only, and did not attach to any specific tracts of land. Hence, where the juridical possession was not delivered, the power, not to alter, but to create, the boundaries remained in the Mexican Government, and passed to our own as its successor. But where the juridical possession was delivered, "what was previously a grant of quantity became a grant of a specific tract," (Graham *v.* United States, cited *supra*,) with which neither the Mexican Government nor our own ever afterwards had a right to interfere. The only right that our Government ever had with reference to such lands was simply to ascertain the established boundaries with a view of separating private lands from its own domain, and this was all that was ever contemplated by the legislation on the subject. Hence, with reference to such lands, the power conferred upon the Land Commission and the Courts, and upon the executive officers of the Government, was not an arbitrary power to establish boundaries as it might seem expedient, but a strictly judicial power precisely similar in its nature to that exercised by Courts in other actions involving questions of boundary, namely, the power to determine, from the evidence, the location of the true boundaries as already established. That this power may often have been erroneously exercised, and even that errors may have been committed by the District Court in the present case, is extremely probable. But such errors are precisely similar in their nature and effect to those often committed by Courts of ordinary jurisdiction in controversies concerning boundaries; and it cannot be asserted in the one case any more than in the other that a partition of lands, regularly made by a Court of competent jurisdiction, is void, because in a subsequent controversy with a third party it is judicially determined, whether erroneously or correctly, that the title to a part of the land was not vested in the parties to the partition.

In such a case, as in all other cases where one of the parties is evicted from his allotment, or from part of it, he will have the right to be compensated by the other parties, (Freeman on Co-tenancy and Partition, section 533; Sawyers *v.* Cator, 8 Humpreys, 256; Rawle on Cov. of Title, 4th Ed., 473, 478); and even this right is confined to the original parties and does not pass to an alienee—(Sawyers *v.* Cator, cited *supra;* see, also, 1 Washb. on R. P., 590, (432)—who, however, seems to have overlooked the distinction between the original proceeding for partition between co-parceners, and that afterwards provided for joint-tenants and tenants in common.) But the partition is not rendered invalid, nor can it be collaterally attacked. For in this, as in all other cases, the judgment of a Court of competent jurisdiction, until reversed or set aside, is binding and conclusive upon the parties.

II.

AS TO THE EFFECT OF THE CONFIRMATION BY THE UNITED STATES DISTRICT COURT, AND THE PATENT ISSUED THEREON.

It will be remembered that a separate petition was presented to the Commission by each of the parties, two of them asking for the confirmation respectively of the allotments under the partition, the other, that of Palomares, asking for the confirmation of an undivided one-third of the two ranchos, and that the decrees of the Land Commission in each case confirmed to the petitioner the land allotted to him under the partition.

Had there been a single proceeding to which all the petitioners were parties, and in which the question as to the validity of the partition could properly have been adjudicated, these decrees would have been correct in every particular; but as there was no proceeding pending in which that question could be determined with justice to the parties, it was, perhaps, erroneous for the Commission to enter a decree which in effect determined the question, and finally adjudicated that the partition was valid. For

while technically neither party was concluded by the decrees in the cases of the other partitioners, yet each was concluded by his own decree and could not claim any interest in any land not confirmed to him.

It was therefore proper and necessary for the District Court, in affirming the decrees of the Commission, so far to correct them as to supply this deficiency, and this it did by adding to the portion of its decrees which affirmed the decrees of the Commission a description of the land confirmed as being an undivided interest—which, in view of the controversy disclosed by the petitions, was the only decree that could be properly entered. The effect of the decrees of the District Court was, however, simply to leave the question of the partition undetermined; that is to say, if, as claimed by Palomares, there was no partition, then the land was confirmed to the parties interested as co-tenants; but if, as claimed by Vejar and Dalton, there was a partition, then, upon well-established principles, it was in effect confirmed to them in segregated portions as allotted to them by the partition.

The object of the acts for the confirmation of Mexican claims was simply to "enable the Government to distinguish the public land from that which had been severed from the public domain by Mexico, and that it might fulfill the obligation assumed at the time of the cession of California to secure and protect the property of its inhabitants. * * * The acts of Congress provide that neither the decisions of the Commissioners nor the District or Supreme Court, nor of the Surveyor-General, nor the surveys or patents made in pursuance of them, shall preclude a legal investigation and decision by the proper judicial tribunal between parties having such interfering claims. * * * The language and policy of these enactments limit a controversy like the present to the United States and the claimant." (U. S. *v.* Fossat, 30 How., 425.) "The Government (has) no interest in the contest between parties claiming *ex post facto* the grant."

U. S. *v.* Sutter, 31 How., 170.

Castro *v.* Hendricks, 23 How., 442.

Hence, it is well settled, the patent of the United States, issued in confirmation of a Mexican grant, enures to the benefit of, and the legal title vests in, the grantees of the confirmee by grants prior to the confirmation.

Steinbach *v.* Stewart, 11 Wal., 574–5.
U. S. *v.* Sutter, 21 How., 182.
And cases cited.

Hence, assuming the partition of 1846 to have been valid (which we have abundantly shown was the case), the effect of the decrees of confirmation of the District Court, and of the patents issued thereon, was to confirm to the patentees respectively the specific tracts of land alloted to them by the partition, and to vest in them the legal title thereof.

III.

As to the Question of Jurisdiction.

The title of the plaintiff rests directly for its validity upon the treaty, the legislation of Congress to carry its treaty obligations into effect, and the confirmation and patent thereunder. It therefore comes directly under the provision of section 709 of the Revised Statutes, that a final judgment or decree of the highest Court of a State may be reviewed by this Court "where any right, title or immunity is claimed under * * * any treaty or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege or immunity (thus) specially set up or claimed."

Hickie *v.* Starke, 1 Peters, 97.
Matthews *v.* Zane, 4 Cranch, 382.
Henderson *v.* Tinnesser, 10 How., 32*s*.
Berthold *v.* McDonald, 22 How, 334.

None of the cases cited by counsel for defendant in error have any tendency to contravene this proposition; but, on the contrary, several of them strongly support it.

In Owens *v.* Norwood (5 Cranch, 344), the plaintiff in error, defendant below in an action of ejectment, had set

up an outstanding title in a British subject, which he claimed was protected by a treaty. The Court held that it had no jurisdiction, because the plaintiff in error did not claim the protection of the treaty for his own property, but for that of another, who was not a party to the suit; and the Court expressly said that if such other party, or his heirs, "had claimed, it would have been a case arising under the treaty."

In the case of New Orleans *v.* Armas (9 Pet., 224), the plaintiff in error claimed the land in controversy as being part of a quay dedicated to the use of the city in the original plan of the town; the defendant, under a grant by the authorities of Louisiana, afterwards confirmed and patented. The decision was in favor of the latter. Had the judgment been against him, the jurisdiction would doubtless have been sustained. The plaintiff in error claimed that its title was protected by the treaty, which provided that the inhabitants of the ceded territory should be incorporated in the Union, and "in the meantime (should) be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess;" but the Court held that "this stipulation ceased to operate when Louisiana became a member of the Union."

This case is broadly distinguished from ours by the fact that we claim under statutes of the United States providing for the confirmation of Mexican titles, and by confirmation and patent thereunder; and also by the fact that the treaty of Guadalupe Hidalgo (Article VIII) expressly stipulates for the security of Mexican titles; and it was to carry this stipulation into effect that the legislation referred to was principally enacted.

Teschemacher *v.* Thompson, 18 Cal., 23.
U. S. *v.* Moreno, 1 Wall., 404.
Estrada *v.* Murphy, 19 Cal., 207.

The case of Choteau *v.* Marguerite (12 Peters, 507), was decided upon the same principle as was New Orleans *v.* Armas.

The case of Maney *v.* Porter (4 How., 55) was decided upon the ground that "the party against whom the State Court decided, instead of setting up an interest under the treaty (in question), expressly averred that no right had been obtained."

In Kennedy *v.* Hunt (7 How., 586) the controversy was between a Spanish grant to Forbes & Co., dated in 1807 (confirming and augmenting a previous grant), and a grant to one Price (Kennedy's grantor) afterwards confirmed and patented. The former the Court expressly held "was a perfect title," and one which did not "require any further step to perfect its boundary" (7 How., pp. 591–2). The two grants were adjacent and fronted on the river Mobile. The land in controversy was a piece of ground covered with water on Mobile river, which was included in the former grant, and which was claimed by the defendant in error, not on the ground that it was within his grant, but on the ground that he was "entitled to claim a riparian right to the channel of the river according to lines drawn at right angles to the front line, and from each terminus thereof, unless some other claim (should) interfere, and it (was) insisted that the addition made to Forbes & Co.'s grant in 1807 (could not) hinder the assertion of Kennedy's right, because the addition was made after Spanish authority ceased, and for so much the grant of 1807 (was) void, and being out of the way Forbes & Co. (could) only claim, as front proprietors, riparian rights, in like manner that Kennedy himself (claimed.)" It was further claimed—the lines of the two grants crossing each other—that the land included between them "should be divided between the two grants, but in what proportions" was not stated. (Id., 593.)

The whole controversy turned upon the location of the Forbes & Co. grant—a perfect title with which the Government had never been concerned—and the decision was in its favor. "The controversy respecting the alluvion drew in question no act of Congress, nor any authority exercised under the Constitution or laws of the United States, and therefore the decision of the State Court could not be opposed either to the laws or to any authority exer-

cised under the laws of the United States. In this case, as in that of McDonough *v.* Millaudon (3 How., 693), the State Courts were called on to construe a perfected Spanish title, and to settle its limits by applying the local law, and, having done so, this Court has no authority to revise the judgment."

In Doe *v.* Eslava (9 How., 445), the Court seemed to be of the opinion that the grant involved was a perfect title derived from the French patent, and did not require or in any way depend upon confirmation by our Government; and it says, "In this view it would be a title or right derived from France, and to overrule it is to overrule what is derived from France and not the United States (p. 445); but the Court adds, "if, as reported by the Commissioners, this is to be treated as an incomplete and confirmed claim, the State Court do not appear to have overruled the title set up by the plaintiff so far as derived from the United States."

It should here be observed, with reference to this and some others of the preceding cases, that the act of 1851 "embraces not only inchoate or equitable titles, but legal titles also; and requires them all to undergo examination and to be passed upon by the Court. * * * In this respect it differs from the act of 1824, under which the claims in Louisiana and Florida were decided. The jurisdiction of the Court in these cases was confined to inchoate equitable titles, which required some other act of the Government to vest in the party the legal title or full ownership. If he claimed to have obtained from either of the former Governments a full and perfect title, he was left to assert it in the ordinary forms of law upon the documents under which he claimed. The Court had no power to sanction or confirm it when proceeding under the act of 1824 or the subsequent laws extending its provisions." (Fremont *v.* The United States 17 How. 554.)

In Gill *v.* Oliver's Executors, 11 How., 545, "both parties (claimed) certain moneys in Court as assignees of Lyde Goodwin, who was a member of the Baltimore Mexican Company, and entitled to a certain proportion of the money awarded to said company as a just claim on the Mexican

Government. The validity of the award or the treaty under which it was made (was) not called in question by either party, as both (claimed) under them."

In the quotation from the opinion in this case the counsel omit a very important passage, which materially qualifies the portion that is given. We quote the whole passage, italicizing the portion omitted. The Court says, by way of illustration:

"If A hold land under a patent from the United States, or a Spanish grant ratified by treaty, and his heirs, devisees, or assignees dispute as to who has the best title under him, this does not make a case for the jurisdiction of this Court under the 25th section of the judiciary act. *If neither the validity or construction of the patent or title under the treaty is contested, if both parties claim under it, and the contest arises from some question without or de hors the patent or the treaty, it is plainly no case for our interference under this section.*" (P. 546–7.)

In Semple *v.* Hagar, 4 Wall., 431, which was a suit to vacate a patent, the State Court refused to take jurisdiction of the case, and this Court held that it had no jurisdiction on that ground.

In Romie *v.* Cassanova, 91 U. S., 370, which was an action of ejectment brought by a party claiming under the City of San José by a grant made subsequent to the acquisition of California, the only Mexican title involved was that of the defendant, which was held valid. (91 U. S., 379; 45 Cal. 131.)

The case of McStay *v.* Freidman, 92 U. S., 723, was similar in character.

The case of Roth *v.* Ehrman, 107 U. S., 319, obviously has no application.

In the case of San Francisco *v.* Scott, 111 U. S., 768, the title involved was a pueblo grant made subsequent to the acquisition of California. The case of Hastings *v.* Jackson, 112 U. S., 233, was similar in principle.

From this, and similar cases, our case is broadly distinguished by the fact that our title was acquired under the Mexican law, was confirmed by the treaty and the legislation of Congress, and by the Commission, courts and officers of the United States acting thereunder.

GEO. H. SMITH.

241-665

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

LOUIS PHILLIPS ET AL.,
Plaintiffs in Error,
v.
THE MOUND CITY LAND AND WATER ASSOCIATION ET AL.

No. 490.

IN ERROR TO THE SUPREME COURT OF CALIFORNIA.

Brief for Defendants in Error.

A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Attorneys for Defendants in Error.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
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In Error to the Supreme Court of California.

BRIEF FOR DEFENDANTS IN ERROR.

At the last term of this court we filed a motion to dismiss this case for want of jurisdiction, on the ground that there was no Federal question involved. The court continued the motion to be heard with the case when it should be reached on its merits.

We now renew the motion.

THE CASE.

This suit was brought September 4, 1882, in the Superior Court of Los Angeles county, California, by the

Mound City Land and Water Association, a corporation, and the Los Angeles County Bank, a corporation, as plaintiffs against Louis Phillips, Trinidad Yorba Francisco Palomares, and Henry Dalton, as defendants. The object of the suit was to make partition of the ranchos San José and San José addition in the said Los Angeles county.

The complaint alleged that the said Mound City Land and Water Association was the owner of one undivided third of said ranchos; that patents had been duly issued by the United States for the said ranchos to Henry Dalton, Ygnacio Palomares, and Louis Phillips, conveying to each of them one undivided third of the same; that the Mound City Land and Water Company had acquired title to the interest of the said Dalton; that Trinidad Yorba had acquired title to the interest of the said Palomares; and that the said Phillips was the owner of the other undivided third; that the said Mound City Company had mortgaged its interest to the said Los Angeles County Bank. It prayed for a partition and for other proper relief.

The defendants, Phillips and Palomares, filed separate answers and cross-bills, setting up, in substance, the same matters of defence and grounds for relief.

So far as the present motion is concerned, it is only necessary to refer to that portion of their answers and cross-bills which include the Federal question, if there be any such question in the case.

They allege that juridical possession was given to the former owners of said ranchos, under whom they claim, and that thereafter they proceeded to make partition of the same by filing a petition for partition in the court of first instance of the city of Los Angeles; and that the said court, on the 15th of February, 1846, by its decree, set apart in severalty the share of each owner in said ranchos (all of which was done before a change of flag), and that they and their gran-

tees have continued to recognize said boundaries as binding upon them.

The said Phillips alleged that the conduct of the owner from whom he purchased was such as to estop him by matters in pais from setting up any claim to the tract claimed by him.

They set out the proceedings, under the act of 1851, before the Commissioners and in the District Court, which finally resulted in the issuance of the patents, giving to the grantees hereinbefore named each one undivided third of both said ranchos. A copy of one of the patents is set forth in the Record, pages 27–35.

The answer of Phillips admitted that the United States patent included $632\frac{93}{100}$ acres not included in the land partitioned by the decree of the court of first instance (Record, p. 12).

And the proof showed that more than 10,000 acres of the lands included in the tracts partitioned were excluded from the lands patented by the United States. The defendants, in their cross-petitions, prayed that the plaintiffs might be decreed to be trustees, holding the legal title in the undivided thirds of the tracts partitioned for their benefit, and that they might be required to convey the same to them.

The Superior Court of Los Angeles gave judgment for plaintiffs below, and the Supreme Court of California affirmed that judgment. This is a writ of error to reverse that judgment of the Supreme Court.

ARGUMENT.

I.

We maintain that there is no Federal question in the case, and therefore that the motion to dismiss for want of jurisdiction should be granted.

Sec. 709, Revised Statutes, provides that "a final judg-
"ment or decree, in any suit in the highest court of a State,
"in which a decision in the suit could be had, where is
"drawn in question the validity of a treaty, or Statute of,
"or an authority exercised under the United States, and
"the decision is against their validity * * * may be
"re-examined and reversed or affirmed in the Supreme
"Court upon a writ of error."

This provision is substantially identical with that in the 25th section of the judiciary act of 1789, and the 2d section of the act of February 14, 1867.

In this case the validity of no treaty was drawn in question; the validity of no statute of the United States was drawn in question, and there was no authority exercised under the United States, and therefore it could not be drawn in question.

The parties all claimed under *patents from the United States which were admitted to be valid.* The only controversy was as to the construction that should be given to the patents, and whether patents, under which all parties claimed, which expressly stated that each grantee should have and hold one undivided third, should be construed to grant, not an undivided third to each, but the *entire estate* of certain tracts to each.

That does not present a Federal question. It does present a question for the State courts to decide, and such is the doctrine of this Court established by numerous decisions, running back to its earliest history.

Owings *v.* Norwood's Lessee, 5 Cranch, 344.
New Orleans *v.* Armas, 9 Pet., 224.
Choteau *v.* Marguerite, 12 Pet., 507.
Maney *v.* Porter, 4 How., 55.

The case of Kennedy *v.* Hunt (7 How., 586) was in its

essential features much like the present. A grant had been obtained from the Spanish government in 1807, in part confirmation of a concession granted in 1796, for certain land adjacent to the town of Mobile, in West Florida. This grant included the land between the then bank of the river and the high-water mark of 1802. An act of Congress of March 2, 1829, confirmed an incomplete Spanish concession which was alleged to draw after it, as a consequence, certain riparian rights conflicting with those claimed under the grant of 1807.

The Supreme Court of Alabama gave the lands covered by these riparian rights to the claimants under the grant of 1807. This court held that the decision of the State court was only a construction of a perfected Spanish title and could not be reviewed in this court, and that no treaty or act of Congress was drawn in question, or any authority exercised under the Constitution or laws of the United States.

The case of Doe *v.* Eslava (9 How., 421) is in point. In that case there were two conflicting claims to land in Louisiana: one founded upon a French grant of 1757, with possession continuing down to 1787; the other founded upon a Spanish grant in 1788, with possession down to 1819. Both claims were confirmed by Congress. The Supreme Court of Alabama gave judgment in favor of the claimant under the Spanish grant. This court held that it had no jurisdiction to review that judgment. Mr. Justice Woodbury, in delivering the opinion of the court, after giving a history of the case, said: "The principles of law applicable "to these possessions, as existing in Alabama, and as to "land held under ancient French and Spanish permits and "grants, we do not propose to consider; nor to revise the "correctness of the rulings of the State court concerning "them, because they are matters clearly within their *sole* "jurisdiction."

And again: "Some questions arose at the trial concern-
" ing the construction of deeds and other conveyances.
" In both lines of title, buildings only are in some in
" stances nominally conveyed, and not in terms the lots
" on which they were situated; in both, too, some of the
" boundaries are unsettled, and the quantity of land in
" dispute by the papers is viewed differently. But such
" questions as these are subordinate to the question of
" title, and proper for the consideration of the State court
" in exercising its appropriate jurisdiction over local ques-
" tions, and hence not subject to our revision (13 Peters,
" 439; United States *v.* King, 3 Howard, 773)."

In Gill *v.* Oliver (11 How., 529) the facts were these: In 1839 a treaty was made between the United States and Mexico, providing for the "adjustment of claims of citizens " of the United States on the Mexican Republic." Under this treaty a sum of money was awarded to be paid to the members of the Baltimore Mexican Company who had subscribed money to fit out an expedition against Mexico under General Mina in 1816. The proceeds of one of the shares of this company were claimed by two parties, one as being the permanent trustee of the insolvent owner of the share, and the other as being the assignee of the provisional trustee, and afterwards the assignee of the insolvent himself.

The Court of Appeals of Maryland gave the fund to the latter, and this court refused to review the case.

Mr. Justice Greer, in delivering the judgment of the court, said: "The treaty and award are facts in that history.
" They were before the court but as facts, and not for con-
" struction. If A hold land under a patent from the United
" States, or a Spanish grant ratified by treaty, and his heirs,
" devisees, or assignees dispute as to which has the best
" title under him, this does not make a case for the juris-

"diction of this court under the twenty-fifth section of the "judiciary act. * * * In deciding this question the "courts of Maryland have put no construction on the treaty "or award, asserted by one party to be the true one, and de- "nied by the other party. It was before them as a fact "only, and for the purpose of construction. * * * It "is a conclusive test of the question of jurisdiction of this "court in the present case, that if we assume jurisdiction "and proceed to consider the merits of the case, we find "it to involve no question either of validity or construction "of treaties or statutes of the United States."

In Semple *v.* Hagar (4 Wall., 431), this court held that it had no jurisdiction to review the judgment of the Supreme Court of California. The facts were as follows: Both parties held patents of the United States under Mexican grants, both of which included the same lands in part. One of the parties brought a suit in the State court to vacate the patent of the other to the extent of the conflict of title. The State court refused to entertain jurisdiction of the question, and dismissed the complaint. This court dismissed the case on motion for want of jurisdiction.

We desire to call special attention to the late case of Romie *v.* Casanova (91 U. S., 379). The action was ejectment, brought in one of the California district courts. The land in controversy was a part of the Pueblo of San José, and was granted under the Spanish government, and finally confirmed by the courts and authorities of the United States. Both parties claimed under the same grantor. The Supreme Court of California affirmed the judgment of the district court. A writ of error was brought to this court. The Chief-Justice delivered the opinion of the court and said:

"No Federal question is presented by the record in this "case. The action was brought to recover possession of

" certain lands. Both parties claimed title from the city " of San José; and the question to be determined was, " which of the two had actually obtained a grant of the " particular premises in controversy. The title of the city " was not drawn in question. Even if it depended upon the " treaty of Guadalupe Hidalgo and the several acts of Con- " gress to ascertain and settle private land claims in Cali- " fornia, the case would not be different. Both parties " admit that title, and their litigation extends only *to the* " *determination of the rights which they have severally ac-* " *quired under it. The writ is dismissed.*"

To the same effect is the case of McStay *v.* Freedman, (92 U. S., 723), which was an action of ejectment to recover possession of a certain parcel of the Pueblo lands confirmed to the city of San Francisco by act of Congress. The plaintiff did not attempt to connect himself with the city title, but relied entirely upon his alleged possession and that of his grantors. The defendant claimed under the city title and act of Congress, and under the city ordinance and an act of the Legislature of California.

The Chief-Justice delivered the opinion of the court. He said: " No Federal question was involved in the de- " cision of the Supreme Court. The city title was not " drawn in question. The real controversy was as to the " transfer of that title to the plaintiffs in error; and this " did not depend upon the ' Constitution or any treaty or " ' statute of or commission held or authority exercised un- " ' der, the United States.' The case is, therefore, in all " essential particulars, like that of Romie et al. *v.* Cassa- " nova (91 U. S., 379); and the writ must be dismissed for " want of jurisdiction."

In Roth *v.* Ehrnan (107 U. S., 319) the question related to the validity of a decree of a foreign court annulling a marriage. The Supreme Court of Illinois held that the

decree was valid. This court dismissed the case for want of jurisdiction.

In City and County of San Francisco *v.* Scott (111 U. S., 768) this court held that the decision of the State courts of California upon the question whether an Alcalde in San Francisco, after the conquest and before the incorporation of San Francisco, and before the adoption of a State Constitution by California, could make a valid grant of Pueblo lands, presented no Federal question and was not reviewable in this court.

The Chief-Justice said: "There is no Federal ques-
" tion in this case. The right of San Francisco, under the
" treaty of Guadalupe Hidalgo, to the lands in dispute is
" not denied. Precisely what that right was may not be
" easy to state. * * * The only controversy in this
" case is as to the effect of the Alcalde grant of the Pueblo
" title; and the precise question was 'whether, after the
" ' conquest, * * * and before the incorporation of
" ' the city of San Francisco, and before the adoption of
" ' the Constitution of the State of California, a person
" ' exercising the functions of an Alcalde of the Pueblo
" ' of San Francisco, * * * could make a valid grant
" ' of Pueblo lands, as such officers had been before such
" ' conquest accustomed to do;' and, if so, what would be
" the effect of such a grant? This does not depend on any
" legislation of Congress, or on the terms of the treaty, but
" on the effect of the conquest upon the powers of local
" government in the Pueblo under the Mexican laws. That
" is a question of general public law, as to which the deci-
" sions of the State courts are not reviewable here. This
" has been many times decided. Delmus *v.* Insurance Com-
" pany (14 Wall., 661); Tarver *v.* Keach (15 Wall., 67);
" New York Life Insurance Company *v.* Hendren (92 U.
" S., 286); Dugger *v.* Bocock (104 U. S., 596); Allen *v*
" McVeigh (107 U. S., 433)."

See also Hastings *v.* Jackson (112 U. S., 233), where it was held that this court had no jurisdiction to review the judgment of a State court upon adverse claims to real estate under a common grantor, whose title was derived from the United States, and was not in dispute.

The State of California sought to set aside a patent which it had issued to the defendant for a tract of land granted to the State under an act of Congress. The Chief Justice delivered the opinion of the court, and said: "The "first question which presents itself on this record is as "to our jurisdiction. The suit, although in form by the "State to cancel its patent to Jackson, was, in reality, be- "tween Hastings and Jackson to determine which of the "two had in equity the better right to the land in contro- "versy by reason of the locations of school warrants under "which they respectively claim. There was no dispute "about the grant from the United States to the State. That "was conceded, and both parties claimed under it. The "controversy related only to the alleged conflicting grants "from the State. * * * Both parties thus claimed un- "der the State, and neither asserted title from the United "States except through the State."

In the case now under consideration, this court will not fail to notice that there is no controversy about the Mexican grants. They are conceded to have been valid by all parties. There is no controversy about the patents from the United States. They are admitted by all parties to have been valid. There is no statute of the United States in controversy. There is absolutely no controversy about anything, except as to the division of the patented lands among the present owners. Shall a partition of those lands be made in accordance with the terms of the patents, or in accordance with an alleged division made by a tribunal, a foreign tribunal, before even any survey had been made

which would bind this Government, and which division did not include *all* of the lands granted by the patents, and did include *thousands of acres of the public lands of the United States?*

In the light of the authorities already cited, it is apparent that that question is one for the determination of the State courts. It is a question of the rights of the respective parties under the patents. If it were properly before this court upon our motion (which it is not), it is very clear to our minds that the grantees, *who have accepted a patent*, and all who claim *under them*, would be estopped from asserting any other or different estate from that given by the patent.

We ask that the motion to dismiss for want of jurisdiction be granted.

II.

The Merits.

We maintain that the judgment below must be affirmed, because the record does not disclose a state of facts which raises the questions of law made by counsel for plaintiffs in error.

This court will not look into the record to find for itself what the facts were. It will take the findings of fact as found by the lower court. The facts as found by the lower court are clear and distinct, and are flatly against the plaintiffs in error upon every material point. Let us particularize. We quote from the record:

"Fourth. That the owners of said premises are, and have "been, tenants in common, claiming under the common "title *at all times and* at present" (Record, 22).

"Fifth. That the said ranchos were inchoate grants by "the Mexican government for lands within larger, not finally "located boundaries, leaving the act of final survey, segre-

" gation, and location to the government of Mexico and its " successor, the Government of the United States " (Rec- " ord, 22).

" Sixth. The said ranchos, or either of them, *were not at* " *any time, by any judgment duly made or given at any time* " *by the court of the first instance, or any other court having* " *jurisdiction thereof, partitioned as alleged in the pleadings* " *of the defendants, or either of them, or at all partitioned* " *among the owners of said ranchos* " (Record, 22).

The seventh finding finds that the District Court of California confirmed to each, Henry Dalton, Ygnacio Palomares, and Recardo Vegar, one undivided one-third of said ranchos, and that said parties stipulated and agreed by writing filed therein that said decree should be final; that it did become final, and that said parties and their successors solicited and obtained patents from the United States granting to each one undivided one-third of said ranchos, and that both plaintiffs and defendants claim title and hold under said decree and patents (Record, 22–23).

The ninth finding finds that Phillips purchased by description contained in said decree; that he was not misled by Dalton, and that Dalton never recognized, accepted, or acquiesced in any partition that would estop him from claiming one undivided one-third of said ranchos as a tenant in common (Record, 23).

The eleventh finding finds that the purported partition of 1846 embraced some 10,000 acres of land which did not belong to said ranchos, or said parties; that said purported partition was void because the grant had not been approved by the departmental assembly, and that *no agreement was ever made by the parties as to partition*, but as a matter of temporary convenience more or less regard was had to the old lines of the purported partition as a mere matter of temporary use, and that prior to final survey and patent the occupation of plaintiffs and defendants was in subordination

to the legal title under said decree of the District Court (Record, 23–4).

The twelfth finding finds that the parties presented their claim to the Board of Commissioners for partition, according to said purported partition, and that the Board confirmed the same, but the District Court, on appeal, reversed their decision and confirmed the claims for an undivided one-third to each of the owners, and that the parties stipulated that said decree should be final, and proceeded thereunder to obtain patents, and that said decree became and was *res adjudicata* as to the tenancy in common (Record, 24).

The thirteenth finding finds that the purported partition under the patents as issued would give to Louis Phillips about 9,000 acres of the value of $30 per acre; to Palomares about 10,000 acres of the value of $30 per acre, and to the Dalton interest about 7,000 acres of the value of $10 per acre, or less, not counting improvements (Record, 24).

These various findings are all against the plaintiffs in error, and they do not present the legal questions made by them.

If we are correct in this view it ends the case, and the judgment below must be affirmed.

But if we are in error, and if this court will so far depart from what we understand as its settled practise, as to look into the evidence and ascertain therefrom what the facts are, then we submit that it will be unable to ascertain what the alleged partition of 1846 was, for the reason that all the witnesses on that subject refer for their boundaries to the O'Farrel map (Record, 61, 63, 65, 66, 68, 72); and that map is not found in the record. That map was an important item of evidence, and being omitted from the record it is apparent that the record does not contain *all* the evidence, and for that reason this court will not undertake to find the facts.

Again, we submit that if it were clearly made to appear

that a partition did take place in 1846 as is alleged, that such partition would furnish no sufficient ground for a reversal of the judgment below, and for the reason that, in law, partition acts upon the possession only and is no bar to an action involving the title.

Just what the Mexican law is upon the subject of partition does not appear from the record.

Counsel for plaintiffs in error says: "Assuming, as we "justly may, that the jurisprudence of Mexico was con- "ducted upon the same principles as the jurisprudence of "any State in the Union, it is submitted that had the case "occurred in any one of the States of the Union it must "have been held that the decree of a court of competent "jurisdiction of the partition suit, however mistaken or er- "roneous it may have been in respect of the ownership of "the parties to it in whole and every part of the lands par- "titioned, would be, unless reviewed on a proper bill in the "very same suit, absolutely final and conclusive" (Brief of Geo. F. Edmunds, page 6).

It is well known that in most of the States there is a statute governing the proceedings in partition and declaring just what estate will be created by them. In some, however, the common law governs. We suppose that counsel for plaintiffs in error will admit that no greater or higher effect should be given to the alleged Mexican partition than would be given to a like proceeding in a State where the common law prevails. What, then, is the common law rule? It is clearly stated in Freeman on Co-tenancy and Partition, § 529. He says:

"Partition was at common law classed as a real action. "* * * Partition was considered as a mere possessory "action, which left the *title* as it found it. Speaking of a "judgment in partition, the Supreme Court of Pennsylva- "nia said: 'What was the legal effect of that judgment?

"'It did not determine title between tenants in common "'who held by descent from a common parent. It decided "'only that it should be parted and divided among them. "'It is the partition that is to remain firm and stable. The "'parties acquire no new title; there is nothing but divid- "'ing the old one among them.' Judge Story thus describes "the effect of a common law partition: 'The present suit "'is a writ of right, and no judgment in a writ or petition "'for partition will constitute any bar to the maintenance "'of a writ of right between the parties. A writ of par- "'tition, or a petition for partition, which is but a substitute "'of the former, is a mere possessory action, and at most "'a judgment in a possessory action can bar only an action "'of as high a nature; that is, a possessory action for the "'judgment only establishes the right of possession. But "'a writ of right is in no sense a possessory action. It is "'founded on the mere right, and not upon the possession, "'and the general issue, or mise, is but a trial of the mere "'right. The plea of the demandant of a sole seisin, to "'the petition of partition, even if it were found against "'him, would only disprove his sole seisin at the time when "'the petition was filed. It would not prove that he was "'not so seized at any time within the last twenty years, "'which is the statute limitation of writs of right. It could "'not be pleaded as a bar to a writ of right, or as an "'estoppel thereof, since it did not and could not try the "'same question, who had the better mere right? The "'most that can be said is that it is admissible as evidence "'between the same parties. But of what is it evidence? "'Certainly only of the very fact of sole seisin put in issue "'by the pleadings at the time when the petition was filed.'"

Applying the common law rule, and it would seem clear that the partition of 1846, if it had been made as alleged, would be no bar to the present suit.

Wade v. *Deray*, 50 Cal., 376.

But partition proceedings under the laws of California are in the nature of a writ of right and involve title. The Prac-

tice Act of that State expressly provides that "*the rights* " of the several parties, plaintiffs as well as defendants, may " be put in issue, *tried*, and *determined by said action*" (Sec. 5,209 General Laws Cal.), and that "judgment shall " be rendered that such partition be *effectual forever*, which " judgment shall be *binding and conclusive*" on all persons named in the action as parties, on all unknown parties brought in by publication, and all persons claiming from such parties or persons, or either of them (Sec. 5,216 General Laws, Cal.)

Moreover, the duty of surveying, segregating, and setting off the land covered by the grants of the ranchos San Jose and San Jose Addition passed from the former government to the United States, as has been repeatedly settled by this court.

" The right which the Mexican government reserved to " control this survey passed, with all other public rights, to " the United States; and the survey must now be made " under the authority of the United States, and in the form " and divisions prescribed by law for surveys in California, " embracing the entire grant in one tract."

Fremont v. *United States*, 17 How., 565.
United States v. *Armigo*, 5 Wall., 449.

For an able consideration of this case we refer to the opinion of the Supreme Court of California, found in the record, affirming the judgment below.

We shall submit this case with a single remark as to that portion of Sec. 15, Act of March 3, 1851, which provides that the " patent issued under this act should be conclusive " between the United States and said claimants only, and " shall not affect the interests of *third persons*."

Counsel for plaintiffs in error claim that this clause prohibits the board or other tribunal, acting under the act of

1851, from settling any question that might arise as to the rights of any of the claimants before it.

That this is not the true construction is settled by numerous cases, among others those of *Moore* v. *Wilkinson* (13 Cal., 488) and *Arguello* v. *Greer* (26 Cal., 626).

It is there held that the "third persons" referred to are those who are not claimants under the United States, but who hold independent of the United States.

We ask affirmance of the judgment of the court below.

A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Attys. for Defts. in Error.